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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928.9

No. 475 9

HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY, PETITIONER,

vs.

A. B. LEACH & COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1928

CERTIORARI GRANTED OCTOBER 29, 1928

(33,788)

(33,788)

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vs.

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CAPTION.

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, SS.

Record of the proceedings of the District Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said Court begun and held at the City of Cleveland, in said District, on the first Tuesday in February, being the 2d day of said month, in the year of our Lord One Thousand Nine Hundred and Twenty-six, and of the Independence of the United States of America, the One Hundred and Fiftieth, towit: on Thursday, the 18th day of March, A. D. 1926.

Present: HONORABLE D. C. WESTENHAVER,
United States District Judge.

HUGH W. GRANT, Receiver of
THE STRUTHERS FURNACE COMPANY,
vs.
A. B. LEACH & COMPANY, INC.
No. 1606.

Said action was commenced on the 5th day of August, A. D. 1925, and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed, process was issued and returned, and orders of the Court were made and entered in the order and on the dates hereinafter stated, to wit:

PETITION.

(Filed Aug. 5, 1925.)

Now comes the plaintiff, Hugh W. Grant, and avers that he is the duly appointed and qualified receiver of all of the property, goods, assets, choses in action, and of all other kind and character of property of The Struthers Furnace Company, duly appointed by the Common Pleas Court of Mahoning County in the case of The Guardian Savings and Trust Company, Trustee, Cleveland, Ohio, vs. The Struthers Furnace Company, being case No. 56103 in the said court, and that he was appointed and duly qualified on the 20th day of January, 1925, and that he is a citizen and resident of the State of Ohio;

Avers that the defendant, A. B. Leach and Co. Inc. is a corporation duly incorporated and organized under the laws of the State of New York, and is a citizen of said State, authorized to do business in the State of Ohio, in the Northern District thereof with offices and general managers upon whom service of summons can be had in this jurisdiction, that it is now, and was at all other times hereinafter mentioned, engaged in the business of buying and selling stocks and bonds and other corporate securities; that the amount in controversy in this action exceeds three thousand ($3000.00) dollars; that this action is brought by this Receiver by virtue of authority so to do granted to him by the Court so appointing him as Receiver.

This plaintiff for his cause of action against the said defendant, avers:

That on the 15th day of December, 1919, The Struthers Furnace Company, pursuant to the authorization of its stockholders and directors by action duly taken, increased the capital stock of said corporation from one million ($1,000,000.00) dollars to two million two hundred fifty thousand ($2,250,000.00) dollars by the addition of one million two hundred fifty thousand ($1,250,000.00) dollars of seven percent cumulative preferred stock; that in said Resolutions authorizing the increase of said capital stock and the issuing of said preferred stock it was provided among other things that it should be redeemed by the Company only out of the net surplus profits of the profits of the Company at any quarter annual dividend payment, and only out of a

redemption fund set aside out of said net surplus profits each year for that particular purpose and that the stock so to be redeemed and retired was to be determined by lot, that is, the particular shares to be redeemed at such period and out of such redemption fund was to be determined impartially and by lot in the manner provided for in said Resolutions relating to the increase of said capital stock and the increase of said preferred stock.

It was further provided in said Resolutions that no mortgage or other liens should be placed upon the real estate, plant or equipment of the Company or any part thereof except by the vote or assent in writing of the holders of three fourths in amount of the preferred stock so issued.

The plaintiff avers that prior thereto, to-wit on the 29th day of November, 1919, said The Struthers Furnace Company anticipating the issuing of said preferred stock entered into a contract with A. B. Leach and Company, Inc. under the laws of the State of New York to purchase all of said preferred stock when issued under said Resolutions and subject to said conditions as to redemption and other conditions herein before set forth and as contained in said resolutions, at a certain percentage of the par value thereof and that the said A. B. Leach and Co. Inc. well knew all of the conditions as to the redemption of said stock and the fund out of which alone the stock could be redeemed and of the necessity of three fourths in amount of holding of said stock to consent to the subsequent making of any mortgage on the company's property.

Plaintiff further says that it is informed and believes and so avers the fact to be that the said A. B. Leach and Company Inc. purchased all of said preferred stock so issued.

Plaintiff avers that thereafter to-wit on the 5th day of May, 1922, for the declared purpose of borrowing money for the general corporate uses and purposes of The Struthers Furnace Company at meetings duly and regularly held upon proper notice authorized the making and execution to The Guardian Savings and Trust Company as Trustee of the corporation mortgage and bonds which are the subject matter of this action. That at said time the defendant was the owner of at least three thousand shares of the preferred stock of this corporation and voted at the stockholders' meeting authorizing

said bond issue and the execution of the mortgage, three thousand shares of said preferred stock and that said three thousand shares, so voted and assenting to the making of said bonds and mortgage, was necessary in order to make up the seventy five percent of the outstanding preferred stock requisite to the making of the mortgage by said corporation.

Plaintiff avers that pursuant to the authorization of the Board of Directors and of the stockholders of The Struthers Furnace Company so procured thru the cooperation of A. B. Leach and Co. Inc. as aforesaid The Struthers Furnace Company on or about the 18th day of May, 1922, made, executed and delivered to The Guardian Savings and Trust Company, Trustee, of Cleveland, Ohio, its first mortgage bonds on all of the real estate of said corporation, its plant, equipment, apparatus, implements and appliances.

This plaintiff avers that prior thereto, to-wit, on the 15th day of April, 1922, The Struthers Furnace Company and A. B. Leach and Co. Inc. anticipating said mortgage and bond issue entered into a written contract for a valuable consideration by the terms of which the said A. B. Leach and Co. Inc. was given the right, privilege and option of purchasing all of said bond issue so to be secured by said mortgage by the payment in cash at ninety percent of eight hundred thousand ($800,000.00) dollars of the par value of said bonds and of the four hundred fifty thousand ($450,000.00) dollars of the par value of said bonds upon the following terms, to-wit:—

> "For Every Fifteen Hundred ($1500.00) Dollars of the Par Value of Bonds at the Price of Ninety and One-Half Percent (90½%) and Accrued Interest There Shall be Paid Ten Shares of the Furnace Company's Preferred Stock at Eighty Five ($85.00) Dollars Per Share and Accrued Dividend. The Balance to be Paid in Cash."

The remainder of said issue of bonds, namely, two hundred fifty thousand ($250,000.00) dollars par value may be taken and paid for at the election of A. B. Leach and Co. Inc. at the price of ninety ($90.00) dollars and accrued interest in cash upon delivery. Said contract further provided that said A. B. Leach and Co. Inc. in the event that they exercise the option aforesaid to take

and pay for the said bonds from time to time either in cash, or cash and stock in the amounts as and when called for within one hundred twenty five days from the date of the exercise of said option by it.

The plaintiff avers that said The A. B. Leach and Co. Inc. well knowing as aforesaid that The Struthers Furnace Company was without authority of law to issue bonds in redemption of or in payment of its preferred stock or any part thereof and well knowing that its preferred stock could only be redeemed and retired at specified time when chosen by lot and then only out of a redemption fund accumulated from net surplus profits, voted as aforesaid the three thousand shares of the preferred stock at the Directors' Meeting authorizing said mortgage, well knowing that without said three thousand shares the required seventy five percent of the preferred stock could not be obtained.

The plaintiff avers that said A. B. Leach and Co. Inc. entered into its said contract of April 15th, 1922, providing for the exchange of its preferred stock for the first mortgage gold bonds of this Company, thereafter to be issued, well knowing the invalidity of said contract and well knowing and believing that the preferred stock it then held was of doubtful value, and fraudulently conspired with W. C. Runyon, president or vice president of The Struthers Furnace Company, who then held or controlled a majority of the stock of the said Company or controlled those holding a majority of the stock of said Company, to enter into said bond purchasing option or contract, and wrongfully and fraudulently conspired with said Runyon to enable the said A. B. Leach and Co. Inc. to acquire said bonds for its stock, to vote at the stockholders' meeting of May 5th its three thousand shares of preferred stock in order to make up the necessary seventy five percent of the preferred stockholders requisite to the authorization of said bonds and mortgage, well knowing that by said fraudulent and wrongful action and conspiracy it was depriving The Struthers Furnace Company of the right to sell its bonds for the purpose of raising needed money to carry on and prosecute the general corporate business of said Company.

The plaintiff avers that thereafter the said A. B. Leach and Co. Inc. exercised its option to take at least four hundred fifty thousand ($450,000.00) dollars of the

bonds of this Company so issued at ninety and one half percent (90½%) of their face value, the additional one half percent (½%) being subsequently agreed upon, and for each fifteen hundred ($1500.00) dollars of bonds so purchased at ninety and one half (90½%) percent to deliver up and exchange with The Struthers Furnace Company ten shares of the preferred stock so held by it at eighty five ($85.00) dollars per share and paid the balance of each fifteen hundred ($1500.00) dollar allotment in cash; that The Guardian Savings and Trust Company, Trustee, upon the order of A. B. Leach and Co. Inc. delivered to it the four hundred fifty thousand ($450,000.00) dollars par value of the bonds of such company and received in payment therefor pursuant to said illegal contract three thousand shares of the preferred stock so held by Leach and Company upon the terms contained in said contract, and the transfer agent of said corporation assumed to issue a certificate for three thousand shares of the preferred capital stock of said corporation so exchanged for bonds for Leach and Company Inc., said certificate being issued in the name of W. C. Runyon, Trustee of The Struthers Furnace Company and the balance in cash, well knowing that as such Trustee, which fact was also well known to the said A. B. Leach and Co. Inc. that with or without the consent of The Struthers Furnace Company it was without authority of law to exchange the preferred stock of said Company for bonds of said Company, and that the said stock was not attempted to be redeemed by said Company out of any redemption fund accumulated for that purpose out of the net surplus profits, well knowing that said stock had not been selected by lot for redemption or retirement; and received only such money therefor from the said A. B. Leach and Co. Inc. for every fifteen hundred ($1500.00) dollars worth of the face value of said bonds as the difference between ten shares of preferred stock at eighty five ($85.00) dollars per share and fifteen one hundred dollar bonds at ninety and one half (90½) per share, to-wit, received only the sum of five hundred fifteen ($515.00) dollars in cash for every fifteen hundred ($1500.00) dollars allotment of bonds and received as a balance of said sale ten shares of the preferred stock of this Company, and thereupon turned over to The Struthers Furnace Company three thousand shares of its preferred stock as aforesaid, and paid the balance in cash, well knowing

that as aforesaid The Struthers Furnace Company was without authority of law to redeem or retire said preferred stock by the issuing of bonds in payment therefor and was without authority to redeem those particular bonds held by said A. B. Leach and Co. Inc. in any event, and well knowing that said stock was not being redeemed or retired by said Company out of any redemption fund accumulated out of the net surplus profits of this Company.

This plaintiff is unable to state the serial numbers of the bonds of this Company so unlawfully delivered by the Trustee to A. B. Leach and Co. Inc. but the said A. B. Leach and Co. Inc. has full knowledge of the serial numbers, denominations and identity of the particular bonds so delivered in exchange for said preferred stock.

This plaintiff avers that he has tendered back to said A. B. Leach and Co. Inc. the preferred stock witnessed by stock certificate made out in the name of W. C. Runyon, Trustee, duly endorsed to The Struthers Furnace Company and in turn endorsed to A. B. Leach and Co. Inc. and demanded the return of the bonds, which the said A. B. Leach and Co. Inc. has refused, and has made good its tender by depositing said stock certificate in the custody of the Clerk of this Court to be delivered to said A. B. Leach and Co. Inc. on return of said bonds.

Plaintiff prays therefore that the Court will order the said defendant to surrender and deliver to this Trustee those certain bonds, which to its knowledge were exchanged by it for the preferred stock of this Company so held by it, or in the event that it shall transpire that defendant has sold or disposed of said bonds, or any part thereof since acquiring the same, then this plaintiff prays in the alternative that the said defendant be ordered and adjudged to account to this plaintiff, the receiver of The Struthers Furnace Company, and pay him for the full amount of the estimated cash value of all bonds so received in exchange for its preferred stock measured by the estimated value of the preferred stock so exchanged by it in excess for said bonds and that a full and accurate accounting may be had between this Trustee and the defendant, A. B. Leach and Co. Inc. for all of said bonds, if any, sold and disposed of by said A. B. Leach and Co. Inc. and which it is not in a position to redeliver to this plaintiff and that the Court upon the surrender by this plaintiff of all of

the preferred stock of this corporation so delivered by the said A. B. Leach and Co. Inc. will order, adjudge and decree against said A. B. Leach and Co. Inc. on this accounting that it pay to this Receiver the amount found due as prayed for herein. Plaintiff further prays for such other and further relief as to the Court may seem just and equitable.

WILSON, HAHN, HENDERSON & WILSON,

Attorneys for Plaintiff.

STATE OF OHIO,
MAHONING COUNTY, ss.

HUGH W. GRANT, being first duly sworn, says that he is the Receiver of The Struthers Furnace Company, defendant herein; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

HUGH W. GRANT.

Sworn to before me and subscribed in my presence this 30th day of July, 1925.

A. M. HENDERSON,

(Seal) *Notary Public.*

Praecipe.

TO THE CLERK:

Please issue summons to the within named defendant, A. B. Leach and Co. Inc. and make same returnable according to law. Endorse thereon "Return of bonds, accounting and equitable relief demanded."

WILSON, HAHN, HENDERSON & WILSON,
A. M. HENDERSON and F. R. HAHN,

Attorneys for Plaintiff.

ANSWER OF A. B. LEACH & CO., INC., DEFENDANT, TO THE PETITION OF HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY, PLAINTIFF.

(Filed Sept. 25, 1925.)

Now comes A. B. Leach & Co., Inc., a corporation, defendant, and for answer to the petition of Hugh W. Grant, Receiver of The Struthers Furnace Company, plaintiff, heretofore filed herein, says:

1. This defendant admits the allegations in the first paragraph of said petition contained.

2. This defendant admits the allegations in the second paragraph of said petition contained, save and except the allegation therein made this action is brought by said Receiver by virtue of authority so to do granted to him by the court of his appointment; that this defendant has no knowledge or information as to the authority granted to said Receiver to bring said action and therefore neither admits nor denies said allegations of the petition but requires said plaintiff to make strict proof thereof.

3. This defendant admits that on or about the 15th day of December, 1919, The Struthers Furnace Company, pursuant to the authorization of its stockholders and directors by action duly taken, increased the capital stock of said corporation from $1,000,000 to $2,250,000 par value, by the addition of $1,250,000 of 7% cumulative preferred stock, but this defendant denies that in the resolutions authorizing said increase of said capital stock and the issuing of said preferred stock it was provided, among other things, that said preferred stock should be redeemed by the said The Struthers Furnace Company only out of the net surplus profits of the company at any quarter-annual dividend payment and only out of a redemption fund set aside out of said net surplus profits each year for that particular purpose, but avers the facts to be that it was and is provided in the resolutions authorizing the issuance of said preferred stock and in the certificates evidencing said stock that "the whole or any part of the preferred stock may be called for redemption at any time by the Company upon not less than thirty days' prior notice at $105 per share plus all unpaid, accrued and accumulated dividends thereon; that the Company shall, during the year

beginning January 1, 1922, and during each year beginning January 1 thereafter, set aside out of surplus profits and apply to the redemption and retirement of preferred stock on or before March 1 of each year, beginning March 1, 1922, an amount in each year of the first five year period beginning January 1, 1922, of not less than ten per cent., for each year of the second five year period beginning January 1, 1927, not less than fifteen per cent., and for each year thereafter, beginning January 1, 1932, not less than twenty per cent. of the net surplus profits of the Company, for the preceding year remaining after the payment of preferred dividends and all taxes, including any state and federal income or excess profits tax, such redemption and retirement to be (1) by purchase in the market at not exceeding the redemption price, or (2) by calls for redemption''; that it is not provided in and by said resolutions or by said certificates evidencing said preferred stock that said The Struthers Furnace Company should redeem said preferred stock only out of net surplus profits of the company and only out of a redemption fund set aside out of said surplus profits for that particular purpose, nor is it provided in and by said resolutions that the method of redemption therein referred to shall be the only or exclusive method of redeeming or retiring said preferred stock.

4. That it is provided in and by said resolutions that no mortgage or other lien other than a purchase money mortgage shall be placed upon the real estate, plant or equipment of the company, except with the affirmative vote or consent in writing of the holders of three-quarters in amount of the preferred stock of said issue then outstanding.

5. That on the 29th day of November, 1919 The Struthers Furnace Company entered into a contract with A. B. Leach & Co., Inc. by the terms of which A. B. Leach & Co., Inc. undertook to purchase from said The Struthers Furnace Company said issue of $1,250,000 cumulative preferred stock of The Struthers Furnace Company, subject, however, to certain terms and conditions in said agreement set forth; that said contract does not refer to or make a part thereof the terms or conditions to be set forth in said resolutions of the stockholders and/or directors of said company; and this defendant denies that said A. B. Leach & Co., Inc. knew

all of the conditions as to the redemption of said stock or that said stock could be redeemed only out of the net surplus profits of the company, but admits that said A. B. Leach & Co., Inc. was, after the making of the same, familiar with the resolutions adopted by the stockholders and directors of said The Struthers Furnace Company and the terms and provisions of said preferred stock certificates.

6. This defendant admits that said A. B. Leach & Co., Inc. and its associates purchased all of said preferred capital stock of said The Struthers Furnace Company.

7. This defendant admits that on the 5th day of March, 1922, at meetings of the stockholders and directors of The Struthers Furnace Company duly and regularly held upon proper notice, The Struthers Furnace Company authorized the making and execution to The Guardian Savings and Trust Company as Trustee of a corporate mortgage securing an issue of $1,500,000 First Mortgage Sinking Fund 8% Gold Bonds of The Struthers Furnace Company, and admits that on the 5th day of May, 1922 this defendant was the owner of 3,000 shares of the preferred capital stock of the said corporation and that prior to said meetings on the 5th day of May, 1922 this defendant executed and delivered to the secretary of said company a written consent and proxy by the terms of which this defendant appointed W. C. Runyon, W. C. Runyon, Jr., and George A. Coulton, or any one or more of them, as attorney and proxy in its place and stead to appear and to vote, consent and act in respect to all stock of said company standing in the name of A. B. Leach & Co., Inc. at a special meeting of its stockholders on the 5th day of May, 1922, and further consenting and agreeing that said company, by and through its officers and directors, might authorize, issue and dispose of an issue of bonds of the company, not to exceed $1,500,000, and secure the payment of the principal and interest of said bonds by a mortgage on the real estate, plant and equipment of the company, but this defendant is not advised as to whether or not, at said meeting of the stockholders, the said 3,000 shares then held and owned by this defendant were voted by the proxies or any of them named in said written consent and proxy in favor of the issuing of said bonds and the issuing of said mortgage, or whether said 3,000 shares were neces-

sary in order to make up 75% of the outstanding preferred stock requisite to the making of said mortgage, but this defendant avers that stockholders owning and holding more than three-fourths of the preferred capital stock of The Struthers Furnace Company executed and delivered to the secretary of the company said consents and proxies prior to the holding of said meeting on the 5th day of May, 1922.

8. This defendant admits that The Struthers Furnace Company, on or about the 18th day of May, 1922, made, executed and delivered to The Guardian Savings Bank and Trust Company, Trustee, of Cleveland, Ohio, its first mortgage on the real estate, plant and equipment of The Struthers Furnace Company securing said issue of $1,500,000 first mortgage bonds, but this defendant denies that the authorization of the Board of Directors and of the stockholders of The Struthers Furnace Company was procured through the co-operation of this defendant, save and except as this defendant, as a holder of preferred stock, assented thereto by the execution and delivery of said consent and proxy.

9. This defendant admits that on the 15th day of April, 1922 this defendant entered into a contract with The Struthers Furnace Company, in letters and figures as follows, to-wit:—

> "Agreement made this 15th day of April, 1922, between The Struthers Furnace Company, an Ohio corporation, hereinafter called the 'Furnace Company,' party of the first part, and A. B. Leach & Co., Inc., a New York corporation, hereinafter called 'Leach Company,' party of the second part.
>
> "Whereas, the Furnace Company intends to provide for an issue of One Million Five Hundred Thousand Dollars ($1,500,000) principal amount of First Mortgage and Collateral Trust 8% Sinking Fund Gold Bonds to be secured by a First Mortgage and Collateral Trust Indenture, both more particularly described in Exhibit 'A,' hereto annexed, and made a part hereof; and
>
> "Whereas, Furnace Company desires to make arrangements for the sale of said bonds, and for that purpose to give unto the Leach Company the right, privilege and option of buying said bonds or any part thereof and of forming a Syndicate to dispose of the same; and

"Whereas, Leach Company desires the right, at its election, to buy said bonds or a part thereof and form a syndicate to dispose of the same;

"Now, therefore, in consideration of the premises the sum of One Dollar ($1.00) paid by Leach Company to Furnace Company, and other valuable considerations, the receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

"1. The Furnace Company agrees to and hereby does give and grant unto Leach Company the right, privilege and option to purchase the whole or any part of the said issue of bonds at the price of 90 and accrued interest, and to form a syndicate to dispose of the same on such terms and conditions as Leach Company shall fix and determine.

"2. The Furnace Company agrees that in the event Leach Company shall exercise its right to purchase any of said bonds and to form a syndicate to dispose thereof, that it will sell and deliver the same to Leach Company at the price of 90 and accrued interest.

"3. The Furnace Company further agrees in the event that the Leach Company shall exercise its option to purchase any of said bonds and form a syndicate to sell the same, that the Leach Company shall pay for the first Eight Hundred Thousand Dollars ($800,000) par value of said bonds or any part, at the price of 90 and accrued interest in cash upon delivery. In the event that further of said bonds are taken, Leach Company shall have the right to take and pay for any part of Four Hundred and Fifty Thousand Dollars ($450,000), par value thereof, on the following basis:

> For every $1,500 par value of bonds at the price of 90 per cent and accrued interest, there shall be paid ten shares of the Furnace Company's preferred stock at $85 per share and accrued dividend, the balance to be paid in cash.

"The remainder of said bonds, viz., Two Hundred and Fifty Thousand Dollars ($250,000), par value may be taken and paid for at the election of Leach Company at the price of 90 and accrued interest.

"4. The Furnace Company agrees to furnish to Leach Company at once certified copies of earning statements approximately substantiating the figures given in Exhibit 'A' hereto annexed for the years 1917 to 1921, both inclusive, also appraisals of the properties of the party of the first part, properly sworn to, substantiating the figures given in said Exhibit 'A.'

"5. The Furnace Company agrees to submit to its stockholders and directors in due and proper form the matter of the authorization and issue of said bonds and the giving of said mortgage to secure the same, and upon the approval thereof by said stockholders and directors to deliver to Leach Company certified copies of resolutions of its stockholders and directors authorizing said issue of bonds and the execution of the Indenture securing the same, together with a certified copy of the consent of the stockholders in respect thereto, and the opinion of its counsel as to the validity of said issue of bonds and the Indenture securing the same, and that all legal requirements have been complied with.

"6. It is mutually understood and agreed between the parties hereto that if at the time of the issuance of said bonds, bonds of the same class bearing a lower rate of interest may be sold, the interest provided to be paid on said bonds may be less than eight per cent (8%), the rate of interest, however, to be left entirely to the discretion of Leach Company which shall have the right to fix the same.

"7. It is mutually understood and agreed between the parties hereto that the option hereby granted unto Leach Company shall run for a period of two (2) weeks from the date of the receipt by it of the data and all papers hereinabove referred to and agreed to be so furnished by the Furnace Company.

"8. Leach Company agrees, upon receipt of the papers aforesaid, to put forth its earnest efforts in an endeavor to form a syndicate to dispose of said bonds.

"9. Leach Company agrees, in the event that it exercise the option aforesaid, to take and pay for the said bonds from time to time, either in cash and/or cash and stock, as provided in paragraphs

2 and 3 hereof, in the amounts as and when called for, within one hundred and twenty-five (125) days from the date of the exercise of said option by it.

"10. This contract is subject to the ratification and approval of the authorization and issue of said bonds and mortgage by the stockholders and directors of the Furnace Company.

"IN WITNESS WHEREOF, the Furnace Company has hereunto caused this agreement to be signed in its name by its president, or one of its vice-presidents, and its corporate seal to be hereunto affixed, attested by its secretary, by order of its Board of Directors, and Leach Company has hereunto caused the same to be signed in its name by one of its vice-presidents as of the day and year first above written.

THE STRUTHERS FURNACE COMPANY,

(Seal) By .....

Attest:

.....

Secretary.

A. B. LEACH & CO., INC.,

(Seal) By .....

Vice-President.

Attest:

.....

Secretary."

10. This defendant denies that A. B. Leach & Co., Inc. well knew that The Struthers Furnace Company was without authority of law to issue bonds in redemption of or in payment of its preferred stock or any part thereof, and denies that said The Struthers Furnace Company was without authority of law to issue bonds in redemption of or in payment of its preferred stock or to purchase its preferred stock and pay therefor with bonds, and denies that this defendant well knew that said preferred stock could only be redeemed and returned at specified times when chosen by lot and then only out of a redemption fund accumulated from net surplus profits and denies that said preferred stock could only be so redeemed and returned, and denies that this defendant voted the said 3,000 shares of the pre-

ferred stock at the directors' meeting authorizing said first mortgage, and denies that this defendant well knew that without said 3,000 shares the required 75% of the preferred stock could not be obtained.

11. This defendant denies that A. B. Leach & Co., Inc. entered into said contract of April 15, 1922, well knowing the invalidity of said contract and well knowing and believing that the preferred stock it then held was of doubtful value, but avers the fact to be that this defendant was advised by counsel learned in the law, prior to the making and execution of said contract of April 15, 1922, that the exchange of said preferred stock for said first mortgage bonds was lawful and valid, and is now advised by counsel, and on such information and belief states the fact to be, that said exchange was and is valid; and this defendant denies that it ever fraudulently conspired with W. C. Runyon, President or Vice President of The Struthers Furnace Company, to enter into said contract of April 15, 1922, or that this defendant conspired with any other person or persons, as alleged in said petition, and denies that this defendant fraudulently and wrongfully conspired with said Runyon so as to enable this defendant to acquire said bonds for its stock, to vote at said stockholders' meeting of May 5, 1922, its said 3,000 shares of preferred stock in order to make up the requisite 75% of the preferred stockholders, and denies that this defendant, by any fraudulent and wrongful action and conspiracy, deprived the said The Struthers Furnace Company of the right to sell its bonds for the purpose of raising needed money to carry on and prosecute the business of said company, and denies all manner of unlawful and fraudulent conspiracies as in said petition alleged; that this defendant has no knowledge or information as to the amount of stock held or controlled by said W. C. Runyon, or whether said W. C. Runyon controlled the holders of a majority of the stock of said company, and therefore this defendant neither admits nor denies said allegation of said petition.

12. This defendant admits that some time after the making of said contract of April 15, 1922, this defendant elected to exercise the option given to it in and by said contract and to purchase said entire bond issue of the par value of $1,500,000 at 90½% of the face value thereof, and admits that this defendant paid to said The Struthers Furnace Company the full cash amount required by said contract and delivered to or for the

account of said The Struthers Furnace Company said 3,000 shares of the preferred capital stock of said The Struthers Furnace Company in accordance with the terms of said contract; that in return therefor this defendant received from said The Guardian Savings and Trust Company, Trustee, or there was delivered upon this defendant's order, the said $1,500,000 par value of bonds. This defendant denies that said contract was in any respects illegal or invalid, and denies that the transfer agent of said corporation assumed to issue a certificate for 3,000 shares of the preferred stock so delivered in part payment for said bonds, and denies that this defendant knew that with or without the consent of The Struthers Furnace Company said Trustee was without authority of law to exchange the preferred stock of said company for bonds of said company; that this defendant has no knowledge as to whether or not said stock was attempted to be redeemed by said company out of any redemption fund accumulated for that purpose out of net surplus profits, but avers the fact to be that said stock was sold and delivered to said company in accordance with the terms of said contract; that said The Struthers Furnace Company received, in addition to said 3,000 shares of stock, the full amount of cash provided for in and by said contract, and this defendant denies that The Struthers Furnace Company was without authority of law to redeem or retire said preferred stock by the issuing of bonds in payment therefor, and was without authority of law to redeem or to purchase the stock held by this defendant, and denies that this defendant well knew that said stock was not being redeemed or retired by said company out of any redemption fund accumulated out of the net surplus profits of said company, but avers the fact to be that said stock was purchased by said company from this defendant, and that said company, in making said purchase, had full power and lawful authority so to do.

13. This defendant denies that A. B. Leach & Co., Inc. has full knowledge of the serial numbers, denominations and identity of the particular bonds delivered to this defendant in exchange for said preferred stock, but avers the fact to be that this defendant has no knowledge as to the serial numbers, denominations or identity of the particular bonds which were in part paid for by said 3,000 shares of the preferred capital stock of said The Struthers Furnace Company.

14. This defendant admits that on or about the 24th day of July, 1925, the said plaintiff tendered to the representative of this defendant at Cleveland, Ohio, a certain certificate for 3,000 shares of the preferred capital stock of The Struthers Furnace Company, executed on the 13th day of July, 1922, standing in the name of W. C. Runyon, Trustee, and by him endorsed to The Struthers Furnace Company under date of January 20, 1923, and bearing also the endorsement of said plaintiff under date of May 13, 1925, and that said plaintiff, at the time of the making of said tender, made a demand for the return of certain bonds, and that said demand was refused by this defendant; that this defendant has no knowledge or information as to whether or not the certificate so tendered was or is the certificate evidencing the original 3,000 shares delivered by this defendant to said The Struthers Furnace Company pursuant to said contract of April 15, 1922, or as to whether or not said plaintiff has made good its said tender by depositing said stock certificate in the custody of the Clerk of this Court.

WHEREFORE, having fully answered the foregoing petition, this defendant prays that the same may be dismissed at plaintiff's costs.

A. B. LEACH & CO., INC.,
By NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
DAY & DAY,
Its Attorneys.

AMENDED ANSWER OF A. B. LEACH & CO., INC., DEFENDANT, TO THE PETITION OF HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY, PLAINTIFF.

(Filed Jan. 23, 1926.)

Now comes A. B. Leach & Co., Inc., a corporation, defendant, and, leave of Court first had, files this its amended answer, to the petition of Hugh W. Grant, Receiver of The Struthers Furnace Company, Plaintiff, heretofore filed herein, says:

1. This defendant admits the allegations in the first paragraph of said petition contained.

2. This defendant admits the allegations in the second paragraph of said petition contained, save and except the allegation therein made that this action is brought by said Receiver by virtue of authority so to do granted to him by the court of his appointment; that this defendant has no knowledge or information as to the authority granted to said Receiver to bring said action and therefore neither admits nor denies said allegations of the petition but requires said plaintiff to make strict proof thereof.

3. This defendant admits that on or about the 15th day of December, 1919, The Struthers Furnace Company, pursuant to the authorization of its stockholders and directors by action duly taken, increased the capital stock of said corporation from $1,000,000.00 to $2,250,000.00 par value, by the addition of $1,250,000.00 of 7% cumulative preferred stock, but this defendant denies that in the resolutions authorizing said increase of said capital stock and the issuing of said preferred stock it was provided, among other things, that said preferred stock should be redeemed by the said The Struthers Furnace Company only out of the net surplus profits of the company at any quarter-annual dividend payment and only out of a redemption fund set aside out of said net surplus profits each year for that particular purpose, but avers the fact to be that it was and is provided in the resolutions authorizing the issuance of said preferred stock and in the certificate evidencing said stock that "the whole or any part of the preferred stock may be called for redemption at any time by the Company upon not less than thirty days' prior notice at $105.00 per share plus all unpaid, accrued and accumulated dividends thereon; that the Company shall, during the year beginning January 1, 1922, and during each year beginning January 1 thereafter, set aside out of surplus profits and apply to the redemption and retirement of preferred stock on or before March 1 of each year, beginning March 1, 1922, an amount in each year of the first five year period beginning January 1, 1922, of not less than ten per cent. for each year of the second five year period beginning January 1, 1927, not less than fifteen per cent. and for each year thereafter, beginning January 1, 1932, not less than twenty per cent of the net surplus profits of the Company, for the preceding year re-

maining after the payment of preferred dividends and all taxes, including any state and federal income or excess profits tax, such redemption and retirement to be (1) by purchase in the market at not exceeding the redemption price, or (2) by calls for redemption"; that it is not provided in and by said resolutions or by said certificates evidencing said preferred stock that said The Struthers Furnace Company should redeem said preferred stock only out of net surplus profits of the company and only out of a redemption fund set aside out of said surplus profits for that particular purpose, nor is it provided in and by said resolutions that the method of redemption therein referred to shall be the only or exclusive method of redeeming or retiring said preferred stock.

4. That it is provided in and by said resolutions that no mortgage or other lien other than a purchase money mortgage shall be placed upon the real estate, plant or equipment of the company, except with the affirmative vote or consent in writing of the holders of three-quarters in amount of the preferred stock of said issue then outstanding.

5. That on the 29th day of November, 1919, The Struthers Furnace Company entered into a contract with A. B. Leach & Co., Inc., by the terms of which A. B. Leach & Co. Inc., undertook to purchase from said The Struthers Furnace Company said issue of $1,250,000.00 cumulative preferred stock of The Struthers Furnace Company, subject, however, to certain terms and conditions in said agreement set forth; that said contract does not refer to or make a part thereof the terms or conditions to be set forth in said resolutions of the stockholders and/or directors of said company; and this defendant denies that said A. B. Leach & Co. knew all of the conditions as to the redemption of said stock or that said stock could be redeemed only out of the net surplus profits of the company, but admits that said A. B. Leach & Co. Inc. was, after the making of the same, familiar with the resolutions adopted by the stockholders and directors of said The Struthers Furnace Company and the terms and provisions of said preferred stock certificates.

6. This defendant admits that said A. B. Leach & Co. Inc. and its associates purchased all of said preferred capital stock of said The Struthers Furnace Company.

7. This defendant admits that on the 5th day of March, 1922, at meetings of the stockholders and directors of The Struthers Furnace Company duly and regularly held upon proper notice, The Struthers Furnace Company authorized the making and execution to The Guardian Savings and Trust Company as Trustee of a corporate mortgage securing an issue of $1,500,000.00 First Mortgage Sinking Fund 8% Gold Bonds of The Struthers Furnace Company, and admits that on the 5th day of May, 1922, this defendant was the owner of 3,000 shares of the preferred capital stock of the said corporation and that prior to said meetings on the 5th day of May, 1922, this defendant executed and delivered to the secretary of said company a written consent and proxy by the terms of which this defendant appointed W. C. Runyon, W. C. Runyon, Jr., and George A. Coulton, or any one or more of them, as attorney and proxy in its place and stead to appear and to vote, consent and act in respect to all stock of said company standing in the name of A. B. Leach & Co., Inc. at a special meeting of its stockholders on the 5th day of May, 1922, and further consenting and agreeing that said company, by and through its officers and directors, might authorize, issue and dispose of an issue of bonds of the company, not to exceed $1,500,000.00, and secure the payment of the principal and interest of said bonds by a mortgage on the real estate, plant and equipment of the company, but this defendant is not advised as to whether or not, at said meeting of the stockholders, the said 3,000 shares then held and owned by this defendant were voted by the proxies or any of them named in said written consent and proxy in favor of the issuing of said bonds and the issuing of said mortgage, or whether said 3,000 shares were necessary in order to make up 75% of the outstanding preferred stock requisite to the making of said mortgage, but this defendant avers that stockholders owning and holding more than three-fourths of the preferred capital stock of The Struthers Furnace Company executed and delivered to the secretary of the company said consents and proxies prior to the holding of said meeting on the 5th day of May, 1922.

8. This defendant admits that The Struthers Furnace Company, on or about the 18th day of May, 1922, made, executed and delivered to The Guardian Savings and Trust Company, Trustee, of Cleveland, Ohio, its first mortgage on the real estate, plant and equipment of The

Struthers Furnace Company securing said issue of $1,500,000.00 first mortgage bonds, but this defendant denies that the authorization of the Board of Directors and of the stockholders of The Struthers Furnace Company was procured through the co-operation of this defendant, save and except as this defendant, as a holder of preferred stock, assented thereto by the execution and delivery of said consent and proxy.

9. This defendant admits that on the 15th day of April, 1922, this defendant entered into a contract with The Struthers Furnace Company, in letters and figures as follows, to-wit:

"Agreement made this 15th day of April, 1922, between The Struthers Furnace Company, an Ohio corporation, hereinafter called the 'Furnace Company,' party of the first part, and A. B. Leach & Co., Inc., a New York corporation, hereinafter called 'Leach Company,' party of the second part.

"Whereas, the Furnace Company intends to provide for an issue of One Million Five Hundred Thousand Dollars ($1,500,000) principal amount of First Mortgage and Collateral Trust 8% Sinking Fund Gold Bonds to be secured by a First Mortgage and Collateral Trust Indenture, both more particularly described in Exhibit 'A,' hereto annexed, and made a part hereof; and

"Whereas, Furnace Company desires to make arrangements for the sale of said bonds, and for that purpose to give unto the Leach Company the right, privilege and option of buying said bonds or any part thereof and of forming a Syndicate to dispose of the same; and

"Whereas, Leach Company desires the right, at its election, to buy said bonds or a part thereof and form a syndicate to dispose of the same;

"Now, Therefore, in consideration of the premises, the sum of One Dollar ($1.00) paid by Leach Company to Furnace Company, and other valuable considerations, the receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

"1. The Furnace Company agrees to and hereby does give and grant unto Leach Company the right, privilege and option to purchase the whole or

any part of the said issue of bonds at the price of 90 and accrued interest, and to form a syndicate to dispose of the same on such terms and conditions as Leach Company shall fix and determine.

"2. The Furnace Company agrees that in the event Leach Company shall exercise its right to purchase any of said bonds and to form a syndicate to dispose thereof, that it will sell and deliver the same to Leach Company at the price of 90 and accrued interest.

"3. The Furnace Company further agrees in the event that the Leach Company shall exercise its option to purchase any of said bonds and form a syndicate to sell the same, that the Leach Company shall pay for the first Eight Hundred Thousand Dollars ($800,000) par value of said bonds or any part, at the price of 90 and accrued interest in cash upon delivery. In the event that further of said bonds are taken, Leach Company shall have the right to take and pay for any part of Four Hundred and Fifty Thousand Dollars ($450,000), par value thereof, on the following basis:

For every $1,500 par value of bonds at the price of 90 per cent and accrued interest, there shall be paid ten shares of the Furnace Company's preferred stock at $85 per share and accrued dividend, the balance to be paid in cash.

"The remainder of said bonds, viz., Two Hundred and Fifty Thousand Dollars ($250,000), par value may be taken and paid for at the election of Leach Company at the price of 90 and accrued interest.

"4. The Furnace Company agrees to furnish to Leach Company at once certified copies of earning statements approximately substantiating the figures given in Exhibit 'A' hereto annexed for the years 1917 to 1921, both inclusive, also appraisals of the properties of the party of the first part, properly sworn to, substantiating the figures given in said Exhibit 'A'.

"5. The Furnace Company agrees to submit to its stockholders and directors in due and proper form the matter of the authorization and issue of said bonds and the giving of said mortgage to secure the same, and upon the approval thereof by said

stockholders and directors to deliver to Leach Company certified copies of resolutions of its stockholders and directors authorizing said issue of bonds and the execution of the Indenture securing the same, together with a certified copy of the consent of the stockholders in respect thereto, and the opinion of its counsel as to the validity of said issue of bonds and the Indenture securing the same, and that all legal requirements have been complied with.

"6. It is mutually understood and agreed between the parties hereto that if at the time of the issuance of said bonds, bonds of the same class bearing a lower rate of interest may be sold, the interest provided to be paid on said bonds may be less than eight per cent. (8%), the rate of interest, however, to be left entirely to the discretion of Leach Company which shall have the right to fix the same.

"7. It is mutually understood and agreed between the parties hereto that the option hereby granted unto Leach Company shall run for a period of two (2) weeks from the date of the receipt by it of the data and all papers hereinabove referred to and agreed to be so furnished by the Furnace Company.

"8. Leach Company agrees, upon receipt of the papers aforesaid, to put forth its earnest efforts in an endeavor to form a syndicate to dispose of said bonds.

"9. Leach Company agrees, in the event that it exercise the option aforesaid, to take and pay for the said bonds from time to time, either in cash and/or cash and stock, as provided in paragraphs 2 and 3 hereof, in the amounts as and when called for, within one hundred and twenty-five (125) days from the date of the exercise of said option by it.

"10. This contract is subject to the ratification and approval of the authorization and issue of said bonds and mortgage by the stockholders and directors of the Furnace Company.

"In Witness Whereof, the Furnace Company has hereunto caused this agreement to be signed in its name by its president, or one of its vice-presidents, and its corporate seal to be hereunto affixed, attested by its secretary, by order of its Board of Directors, and Leach Company has hereunto caused

the same to be signed in its name by one of its vice-presidents as of the day and year first above written.

THE STRUTHERS FURNACE COMPANY

(Seal) By .....

Attest:

.....

Secretary

Attest:

A. B. LEACH & CO., INC.

By .....

(Seal) *Vice-President*

.....

Secretary."

10. This defendant denies that A. B. Leach & Co., Inc. well knew that The Struthers Furnace Company was without authority of law to issue bonds in redemption of or in payment of its preferred stock or any part thereof, and denies that said The Struthers Furnace Company was without authority of law to issue bonds in redemption of or in payment of its preferred stock or to purchase its preferred stock and pay therefor with bonds, and denies that this defendant well knew that said preferred stock could only be redeemed and returned at specified times when chosen by lot and then only out of a redemption fund accumulated from net surplus profits and denies that said preferred stock could only be so redeemed and returned, and denies that this defendant voted the said 3,000 shares of the preferred stock at the directors' meeting authorizing said first mortgage, and denies that this defendant well knew that without said 3,000 shares the required 75% of the preferred stock could not be obtained.

11. This defendant denies that A. B. Leach & Co., Inc. entered into said contract of April 15, 1922 well knowing the invalidity of said contract and well knowing and believing that the preferred stock it then held was of doubtful value, but avers the fact to be that this defendant was advised by counsel learned in the law, prior to the making and execution of said contract of April 15, 1922, that the exchange of said preferred stock for said first mortgage bonds was lawful and valid, and is now advised by counsel, and on such information and

belief states the fact to be, that said exchange was and is valid; and this defendant denies that it ever fraudulently conspired with W. C. Runyon, President or Vice President of The Struthers Furnace Company, to enter into said contract of April 15, 1922, or that this defendant conspired with any other person or persons, as alleged in said petition, and denies that this defendant fraudulently and wrongfully conspired with said Runyon so as to enable this defendant to acquire said bonds for its stock, to vote at said stockholders' meeting of May 5, 1922 its said 3,000 shares of preferred stock in order to make up the requisite 75% of the preferred stockholders, and denies that this defendant, by any fraudulent and wrongful action and conspiracy, deprived the said The Struthers Furnace Company of the right to sell its bonds for the purpose of raising needed money to carry on and prosecute the business of said company, and denies all manner of unlawful and fraudulent conspiracies as in said petition alleged; that this defendant has no knowledge or information as to the amount of stock held or controlled by said W. C. Runyon, or whether said W. C. Runyon controlled the holders of a majority of the stock of said company, and therefore this defendant neither admits nor denies said allegation of said petition.

12. This defendant admits that some time after the making of said contract of April 15, 1922 this defendant elected to exercise the option given to it in and by said contract and to purchase said entire bond issue of the par value of $1,500,000 at 90½% of the face value thereof, and admits that this defendant paid to said The Struthers Furnace Company the full cash amount required by said contract and delivered to or for the account of said The Struthers Furnace Company said 3,000 shares of the preferred capital stock of said The Struthers Furnace Company in accordance with the terms of said contract; that in return therefor this defendant received from said The Guardian Savings and Trust Company, Trustee, or there was delivered upon this defendant's order, the said $1,500,000 par value of bonds. This defendant denies that said contract was in any respects illegal or invalid; and denies that the transfer agent of said corporation assumed to issue a certificate for 3,000 shares of the preferred stock so delivered in part payment for said bonds, and denies that this defendant knew that with or without the consent of The Struthers Fur-

nace Company said Trustee was without authority of law to exchange the preferred stock of said company for bonds of said company; that this defendant has no knowledge as to whether or not said stock was attempted to be redeemed by said company out of any redemption fund accumulated for that purpose out of net surplus profits, but avers the fact to be that said stock was sold and delivered to said company in accordance with the terms of said contract; that said The Struthers Furnace Company received, in addition to said 3,000 shares of stock, the full amount of cash provided for in and by said contract, and this defendant denies that The Struthers Furnace Company was without authority of law to redeem or retire said preferred stock by the issuing of bonds in payment therefor, and was without authority of law to redeem or to purchase the stock held by this defendant, and denies that this defendant well knew that said stock was not being redeemed or retired by said company out of any redemption fund accumulated out of the net surplus profits of said company, but avers the fact to be that said stock was purchased by said company from this defendant, and that said company, in making said purchase, had full power and lawful authority so to do.

13. This defendant denies that A. B. Leach & Co., Inc. has full knowledge of the serial numbers, denominations and identity of the particular bonds delivered to this defendant in exchange for said preferred stock, but avers the fact to be that this defendant has no knowledge as to the serial numbers, denominations or identity of the particular bonds which were in part paid for by said 3,000 shares of the preferred capital stock of said The Struthers Furnace Company.

14. This defendant admits that on or about the 24th day of July, 1925, the said plaintiff tendered to the representative of this defendant at Cleveland, Ohio, a certain certificate for 3,000 shares of the preferred capital stock of The Struthers Furnace Company, executed on the 13th day of July, 1922, standing in the name of W. C. Runyon, Trustee, and by him endorsed to The Struthers Furnace Company under date of January 20, 1923, and bearing also the endorsement of said plaintiff under date of May 13, 1925, and that said plaintiff, at the time of the making of said tender, made a demand for the return of certain bonds, and that said demand was refused

by this defendant; that this defendant has no knowledge or information as to whether or not the certificate so tendered was or is the certificate evidencing the original 3,000 shares delivered by this defendant to said The Struthers Furnace Company pursuant to said contract of April 15, 1922, or as to whether or not said plaintiff has made good its said tender by depositing said stock certificate in the custody of the Clerk of this Court.

15. Further answering this defendant says that the contract of purchase of said issue of $1,500,000.00, par value, of bonds of The Struthers Furnace Company has been long since fully executed and performed by both The Struthers Furnace Company and this defendant, as is more specifically set forth in paragraph numbered 12, above; and that the execution and performance of said contract by each of said parties thereto was with full knowledge by The Struthers Furnace Company of the scope and extent of its corporate power as same relates to said acts and/or contracts of which the plaintiff complains, and with said knowledge The Struthers Furnace Company permitted this defendant to purchase said bonds, in part, by exchanging said preferred stock therefor and in great part for cash, in reliance upon the legality of said contract to purchase and the legality of The Struthers Furnace Company's assent thereto; that since the purchase of said bonds, and with such knowledge, The Struthers Furnace Company permitted this defendant to sell all of said bonds to the public and since said purchase has continued to pay interest thereon and to treat the same as valid obligations of The Struthers Furnace Company until shortly before the appointment of the plaintiff herein as its receiver and that, by reason of said facts, said receiver and The Struthers Furnace Company are estopped to deny the power of The Struthers Furnace Company to exchange said bonds, in part, for preferred stock of The Struthers Furnace Company, or to deny that said bonds were not and are not valid obligations of said The Struthers Furnace Company.

WHEREFORE, having fully answered the foregoing petition, this defendant prays that the same may be dismissed at plaintiff's costs.

A. B. LEACH & COMPANY, INC.
By NEWMAN, POPPENHUSEN, STERN & JOHNSTON, and DAY & DAY,

Its Attorneys.

State of Ohio,
Cuyahoga County, ss.

Donald W. Kling, being first duly sworn, deposes and says that he is one of counsel for the defendant, A. B. Leach & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen of said state of New York, and that the facts and allegations contained in its amended answer are true, as he verily believes.

DONALD W. KLING.

SWORN TO BEFORE ME, and subscribed in my presence, this 23rd day of January, A. D. 1926.

G. E. OFFENBACHER,
Notary Public in and for Cuyahoga County.

(Seal)

REPLY OF HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY TO THE AMENDED ANSWER OF A. B. LEACH & CO. INC.

(Filed Jan. 30, 1926.)

Now comes the plaintiff and for his reply to the amended answer of the defendant herein:

Admits that in the Resolution of the Directors of The Struthers Furnace Company adopted December 15th, 1919, looking to the issuance of the preferred stock of said corporation and printed upon the face of the certificate of the preferred stock so issued pursuant to said authorization there occurs the phraseology set forth in the plaintiff's petition among other things but avers that the material portions of said Resolution, the sub-

stance and purport of which is printed upon said stock certificates, is as follows among other things:

"The preferred stock shall be subject to redemption in whole or in part, at the option of the Company, on any quarterly dividend paying date at One Hundred and Five Dollars ($105) per share plus all unpaid accrued and accumulated dividends thereon, such redemption to be upon the notice and in the manner hereinafter set forth with respect to the redemption of stock provided to be called and redeemed by the Company.

"During the year beginning January 1, 1922, and during each year beginning January 1 thereafter, so long as any of said preferred stock remains outstanding, the Company shall set aside out of its surplus profits and apply to the redemption and retirement of said preferred stock as hereinafter provided, an amount in each year, for the first five (5) year period beginning January 1, 1922, of not less than ten per cent. (10%), for each year of the second five (5) year period beginning January 1, 1927, of not less than fifteen per cent (15%) and for each year thereafter beginning January 1, 1932, of not less than twenty per cent (20%) of the net surplus profits of the Company for the preceding year remaining after payment of preferred dividends and all taxes, including any State or Federal income or excess profits taxes.

"The percentage of net surplus profits so required to be set aside for the redemption and retirement of preferred stock shall be deposited by the Company with the Transfer Agent of said stock on or before March 1st, of each year beginning March 1, 1922, and shall be applied by said Transfer Agent to the redemption of preferred stock to be redeemed by the Company by purchase or call, as hereinafter set forth.

"The redemption of preferred stock so required to be made from the net surplus profits of the Company as above provided can be made by the purchase by the Company in the market or preferred stock of said issue, provided the same can be purchased at a price not exceeding One Hundred and Five Dollars ($105) per share plus accrued and accumulated unpaid dividends thereon, but if the

amount required to be redeemed cannot be so purchased for such price, the amount of preferred stock needed to exhaust the percentage of net surplus profits required to be set aside in such year for such redemption shall be called by the Company and redeemed at the redemption price of One Hundred and Five Dollars ($105) per share plus accrued and accumulated unpaid dividends thereon. All stock redeemed, either by purchase or call, shall be forthwith cancelled and shall not be re-issued.

"In all cases of redemption of preferred stock by call the Company shall, if less than the entire amount of outstanding preferred stock is to be redeemed, select such stock by lot at least thirty (30) days prior to the date when the same is to be redeemed, notice of which call and redemption shall be given by registered letter directed to the stockholders whose stock is chosen for redemption, at their respective addresses then appearing on the books of the Company, mailed at least thirty (30) days prior to the date fixed for redemption or in event the entire amount of preferred stock is to be redeemed, then such notice shall be mailed to all the holders of all the outstanding preferred stock, and on such redemption date all rights with respect to such stock, except the right to receive the redemption price therefor, shall cease and determine."

The plaintiff denies that the defendant did not know of the intent and purport of said Resolution and limitation upon the right to redeem said preferred stock or to purchase the same in the open market, or to exchange the same for bonds.

He denies, though the same is unnecessary, the averments of the defendant's answer as to the validity and legality of those transactions and the conclusions of law set forth in said answer.

He denies that the exchange of its bonds for the preferred stock held by the defendant was made with full knowledge by The Struthers Furnace Company of the scope and extent of its corporate power as the same related to the acts and contracts of which the plaintiff complains, and especially denies that the common stockholders and creditors, now represented as to their finan-

cial interests by this Receiver, were affected by any such knowledge.

He denies that since the purchase of said bonds The Struthers Furnace Company knowingly permitted this defendant to sell all of said bonds to the public and especially denies that the common stockholders and creditors of said Company were cognizant of said sales by the defendant.

Admits that certain interest was paid upon the bonds outstanding by The Struthers Furnace Company but denies that the Company continued to treat the bonds involved in this case as a valid obligation of The Struthers Furnace Company until shortly before the appointment of this plaintiff as Receiver, and specifically denies that the stockholders treated said bonds and especially the bonds so exchanged for stock as a valid obligation of The Struthers Furnace Company but in this connection specifically avers in reply to the pleading of the defendant set up in this case that shortly thereafter to-wit, November 13, 1922, and before any interest became due upon said bonds that a stockholder of said corporation owning three hundred shares of stock which had not been voted at said stockholders' meeting authorizing the issuance of said bonds, and who was without knowledge of the optional contract theretofore entered into between The Struthers Furnace Company and A. B. Leach and Company, Inc. looking to the purchase of said bonds when issued, to-wit, Frank C. Kane commenced an action on his own behalf and on the behalf of other stockholders in the Court of Common Pleas of Cuyahoga County, Ohio, against A. B. Leach and Company, Inc., The Guardian Savings and Trust Company as Trustee, and The Struthers Furnace Company, being case No. 205671 in said Court, attacking the validity of said bond issue and the validity of the exchange of bonds for said stock of The A. B. Leach and Company, Inc. and praying for equitable relief and the cancellation of said bonds and that said stock may be returned to A. B. Leach and Company, Inc. and avers that before said case came on for trial that The Struthers Furnace Company, without the knowledge, acquiescence or consent of the stockholders on whose behalf as well as on behalf of the creditors of said Company this action is brought, terminated said action by the purchase of the three hundred shares of the stock of said plaintiff

so owned by said Kane, of all of which facts as aforesaid the said A. B. Leach and Company, Inc., The Guardian Savings and Trust Company had full cognizance at all times, and that at the same time a suit was brought by said Kane in the Court of Common Pleas of Mahoning County, Ohio, the subject and purport of which was to procure an order for an inspection of the books and records and contracts including said optional contract, which case was, as aforesaid, terminated by the plaintiff without the knowledge of the stockholders, save and except of those controlling the majority of stock of said corporation.

WHEREFORE the defendant denies that he as Receiver of The Struthers Furnace Company is estopped to maintain this action from the matters and things averred in his petition and to receive the relief prayed for by reason of any of the matters and things alleged in said answer and he prays for the relief as in his petition.

WILSON, HAHN, HENDERSON & WILSON,
Attorneys for Plaintiff.

STATE OF OHIO,
MAHONING COUNTY, SS.

HUGH W. GRANT, being first duly sworn, says that he is the plaintiff herein; that the facts stated and allegations contained in the foregoing reply are true as he verily believes.

HUGH W. GRANT.

Sworn to before me and subscribed in my presence this 29th day of January, 1926.

H. HERSCHEL HUNT,
(Seal) *Notary Public.*

MOTION.

(Filed April 21, 1926.)

Comes now A. B. Leach and Company, Inc., the above named defendant, by its attorneys, Day and Day and Newman, Poppenhusen, Stern and Johnston, and moves this Honorable Court that an order be entered directing that so much of the testimony as has been reproduced in the exact words of the witnesses in the statement of evidence prepared by the defendant with the consent of the plaintiff, be reproduced in the exact words of the witnesses.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
DAY & DAY,
Counsel for Defendant.

ORDER DIRECTING THAT CERTAIN TESTIMONY BE REPRODUCED IN VERBATIM FORM.

(Entered Apr. 21, 1926, by D. C. Westenhaver, Judge.)

This matter coming on to be heard this 21st day of April, 1926, on motion of the above named defendant that an order be entered directing that so much of the testimony as has been reproduced in the exact words of the witnesses in the statement of evidence prepared by the defendant, in connection with its appeal from a decree in the above entitled cause, be reproduced in the exact words of the witnesses; and it appearing to the Court that statement of the evidence has been prepared herein by the defendant and submitted to the plaintiff and his attorneys, and that the plaintiff's attorneys have approved in all things the statement of the evidence prepared by the plaintiff and have agreed that an order

may be entered by the Court as prayed by plaintiff, and it appearing to the Court that it is necessary to a proper understanding of the evidence that so much of the evidence as has been reproduced in the exact words of the witnesses in the statement of the evidence be reproduced in the exact words of the witnesses,

IT IS HEREBY ORDERED AND DIRECTED that so much of the evidence as has been reproduced in the exact words of the witnesses in the statement of the evidence prepared by the defendant, with the consent and approval of the plaintiff, be reproduced in the exact words of the witnesses in the statement of the evidence required by Equity Rule No. 75.

ORDER APPROVING STATEMENT OF EVIDENCE.

(Entered Apr. 21, 1926, by D. C. Westenhaver, Judge.)

Now comes the defendant and presents to the Court its certain narrative form of testimony taken at the trial of this cause, which being found by the Court to be true, is allowed, signed and sealed, and is hereby ordered to be filed in this cause.

STATEMENT OF EVIDENCE.

Be it remembered and certified that on the hearing of this cause upon the plaintiff's bill, the defendant's amended answer and the plaintiff's reply thereto, said plaintiff appeared by Messrs. Wilson and Henderson of the firm of Wilson, Hahn, Henderson & Wilson, and that the defendant appeared by Mr. W. L. Day of the firm of Day & Day, and Edward R. Johnston of the firm of Newman, Poppenhusen, Stern & Johnston.

That said cause came on duly to be heard at Cleveland, Ohio and that the taking of testimony in open court began on February 10, 1926.

That during the hearing of said cause the following evidence was offered, admitted or excluded, as hereinafter stated, and that the following proceedings were had, that is to say:

Plaintiff, in order to sustain the averments of his bill, introduced the following testimony and evidence and the following proceedings were had:

PLAINTIFF'S CASE IN CHIEF.

Mr. Wilson: I desire to introduce the original Certificate of Incorporation of Struthers Furnace Company in order to show the purpose for which this company was incorporated.

The document above referred to was thereupon received in evidence as Plaintiff's Exhibit 1 and is as follows:

PLAINTIFF'S EXHIBIT NO. 1.

These Articles of Incorporation of The Struthers Furnace Company,

WITNESSETH, That we, the undersigned, all of whom are citizens of the State of Ohio, desiring to form a corporation for profit under the general corporation laws of said State, do hereby certify:

First. The name of said corporation shall be The Struthers Furnace Company.

Second. Said corporation is to be located at Cleveland, Cuyahoga County, Ohio, and its principal business there transacted.

Third. Said corporation is formed for the purpose of manufacturing, purchasing, selling and dealing in coke, pig-iron, rails, bars and, in general, all products of iron and steel, and of doing all things incident thereto.

Fourth. The capital stock of said corporation shall be Two Hundred Thousand Dollars ($200,000), divided into two thousand (2,000) shares of One Hundred Dollars ($100) each.

In Witness Whereof, We have hereunto set our hands this 18th day of May, A. D. 1896.

A. C. Dustin,
H. H. McKeehan,
W. C. Merrick,
C. A. Judson,
Gustav von den Steinen.

State of Ohio,
Cuyahoga County, ss.

Before me, the undersigned, a Notary Public in and for said county in said State, personally came A. C. Dustin, H. H. McKeehan, W. C. Merrick, C. A. Judson and Gustav von den Steinen, to me personally known and known to be the persons described in and who executed the foregoing instrument, and acknowledged that they signed the same freely and voluntarily and that the same is their free act and deed for the purposes therein expressed.

In Witness Whereof, I hereunto set my hand and official seal this 18th day of May, 1896.

Chas. F. Lang,
(Seal) *Notary Public.*

The State of Ohio,
Cuyahoga County, ss.

I, Harry L. Vail, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County, aforesaid, do hereby certify that Chas. F. Lang, before whom the annexed acknowledgment was taken, was at the date thereof, a Notary Public in and for said County, duly authorized by the laws of Ohio to take the same; and I am well acquainted with his handwriting and believe his signature thereto is genuine.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 19th day of May, A. D. 1896.

(Seal) HARRY L. VAIL, *Clerk.*

UNITED STATES OF AMERICA,
STATE OF OHIO, SS.
OFFICE OF THE SECRETARY OF STATE.

I, SAMUEL M. TAYLOR, Secretary of State of the State of Ohio, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Articles of Incorporation of "THE STRUTHERS FURNACE COMPANY," filed in this office on the 20th day of May, A. D. 1896, and recorded in Volume 66, Page 486, of the Records of Incorporations.

WITNESS my hand and official seal, at Columbus, Ohio, this 20th day of May, A. D. 1896.

(Signed) SAMUEL M. TAYLOR,

(Seal) *Secretary of State.*

Mr. Wilson: I offer in evidence the certified copy of the Articles of Incorporation increasing the capital stock and the Certificate of Amendment of Articles of Incorporation by increase of capital stock, which was filed on the same day.

The documents last above referred to were thereupon received in evidence as Plaintiff's Exhibits 2 and 3 respectively and are as follows:

PLAINTIFF'S EXHIBIT NO. 2.

(Filed Dec. 17, 1919.)

Certificate of Increase of Capital Stock of The Struthers Furnace Company.

Corp. No. 13127.

To the Secretary of State,

Columbus, Ohio.

W. C. Runyon, Jr. vice president, and A. Grossman, Secretary of The Struthers Furnace Company, duly authorized in the premises and acting on behalf of said Company, do hereby certify that on December 15, 1919, the authorized capital stock of said company, consisting of Ten Thousand (10,000) shares of the par value of One Hundred Dollars ($100.00) each, was paid for, issued and outstanding; that a meeting of the stockholders of said company was duly called by more than a majority of the Directors of said Company to be held at the office of the Company, Cleveland, Ohio, on December 15, 1919, and that notice of the time, place and object of said meeting was duly waived in writing by all the stockholders of said Company; that at said meeting the written consent of all of the stockholders of said Company was given for increasing the capital stock of the Company, as set forth in the resolution hereinafter following, and that all of the stockholders of said Company also at said meeting voted in favor of the adoption of a resolution in the following words and figures, to-wit:

> Resolved, that the capital stock of the Company consisting of ten thousand (10,000) shares of One Hundred Dollars ($100.00) each be increased to twenty-two thousand five hundred (22,500) shares, such increased capital stock, to-wit: Twelve Thousand five hundred (12,500) shares of the par value of One Hundred Dollars ($100.00) each shall be preferred stock, and Article Fourth of the Articles of Incorporation of the company be and the same shall read as follows.
>
> Fourth: The capital stock of said company, preferred and common, shall be Two Million Two Hundred and Fifty Thousand Dollars ($2,250,000) consisting of ten thousand (10,000) shares of common stock of the par value of One Hundred Dollars ($100.00) each, and twelve thousand five hundred

(12,500) shares of preferred stock of the par value of One Hundred Dollars ($100.00) each, and the designations, preferences and voting powers or restrictions or qualifications thereof attached to said preferred and common stock shall be as follows:

The holders of the preferred stock shall be entitled to receive from the surplus profits of the Company dividends at the rate of seven per cent (7%) per annum, payable quarterly on the first day of February, May, August and November in each year, in preference to and priority over any dividends upon the common stock, and no other dividends. Dividends on the preferred stock shall be cumulative from the quarterly dividend payment date next preceding the date of the original issue of each share thereof, so that if in any quarterly dividend period dividends at the rate of seven percent (7%) per annum shall not have been paid on said stock, the deficiency shall be paid before any dividends shall be paid on the common stock.

The preferred stock shall be preferred both as to earnings and assets and, in event of any voluntary liquidation, dissolution or winding up of the Company, or upon any voluntary distribution of its assets other than by way of dividends from its surplus profits or redemption of its preferred stock as herein provided, the holders of the preferred stock shall be entitled to receive, for and in respect of such stock, the redemption price of One Hundred and Five Dollars ($105) per share, or, if such liquidation, dissolution or winding up be involuntary, the par value of such stock, in each case plus all accrued and accumulated unpaid dividends thereon, before any amount shall be paid or any assets distributed to the holders of the common stock; and after such payment to the holders of preferred stock, all remaining assets of the Company shall belong to and be divided ratably among the holders of the common stock.

Except as herein provided, the holders of the preferred stock shall not be entitled to participate in any distribution of the profits or assets of the Company, either in money or in stock, and shall not be entitled to any subscription rights in any stock hereafter issued by the Company, whether common or preferred.

The preferred stock shall be subject to redemption in whole or in part, at the option of the Company, on any quarterly dividend paying date at One Hundred and Five Dollars ($105) per share plus all unpaid accrued and accumulated dividends thereon, such redemption to be upon the notice and in the manner hereinafter set forth with respect to the redemption of stock provided to be called and redeemed by the Company.

During the year beginning January 1, 1922, and during each year beginning January 1 thereafter, so long as any of said preferred stock remains outstanding, the Company shall set aside out of its surplus profits and apply to the redemption and retirement of said preferred stock as hereinafter provided, an amount in each year, for the first five (5) year period beginning January 1, 1922, of not less than ten per cent. (10%) for each year of the second five (5) year period beginning January 1, 1927, of not less than fifteen per cent (15%) and for each year thereafter beginning January 1, 1932, of not less than twenty per cent. (20%) of the net surplus profits of the Company for the preceding year remaining after payment of preferred dividends and all taxes, including any State or federal income or excess profits taxes.

The percentage of net surplus profits so required to be set aside for the redemption and retirement of preferred stock shall be deposited by the company with the Transfer Agent of said stock on or before March 1st, of each year, beginning March 1, 1922, and shall be applied by said Transfer Agent to the redemption of preferred stock to be redeemed by the Company by purchase or call, as hereinafter set forth.

The redemption of preferred stock so required to be made from the net surplus profits of the Company as above provided can be made by the purchase by the Company in the market of preferred stock of said issue, provided the same can be purchased at a price not exceeding One Hundred and Five Dollars ($105) per share plus accrued and accumulated unpaid dividends thereon, but it the amount required to be redeemed cannot be so purchased for such price, the amount of preferred stock needed to exhaust the percentage of net surplus profits required to be set aside in such year for such redemption shall be called by the Company and redeemed at the redemption price of One Hundred and Five Dollars ($105) per share plus accrued and accumulated un-

paid dividends thereon. All stock redeemed, either by purchase or call, shall be forthwith cancelled and shall not be re-issued.

In all cases of redemption of preferred stock by call the company shall, if less than the entire amount of outstanding preferred stock is to be redeemed, select such stock by lot at least thirty (30) days prior to the date when the same is to be redeemed, notice of which call and redemption shall be given by registered letter directed to the stockholders whose stock is chosen for redemption, at their respective addresses then appearing on the books of the Company mailed at least thirty (30) days prior to the date fixed for redemption, or in event the entire amount of preferred stock is to be redeemed, then such notice shall be mailed to all the holders of all the outstanding preferred stock, and on such redemption date all rights with respect to such stock, except the right to receive the redemption price therefor, shall cease and determine.

The selection by lot of stock for redemption shall be accomplished by placing together the names of all holders of said issue of preferred stock with the number of shares set forth after each name and these names shall be drawn by the Transfer Agent of the preferred stock. The entire amount of stock standing in each name thus drawn shall be selected for redemption before succeeding names are drawn. If the redemption of the required amount of stock necessitates the redemption of a portion only of the stock standing in the name last drawn, any such portion of stock standing in such last name as may be necessary to make up the required total shall be called and redeemed on the terms hereinabove provided.

So long as any of said preferred stock remains outstanding, the Company shall at all times maintain net quick assets in an amount not less than one hundred per cent (100%) of the total par value of the preferred stock at such time outstanding. Quick assets shall be deemed to consist of cash, good accounts and bills receivable, supplies, raw material and merchandise consisting of goods manufactured and in process of manufacture, the value of such merchandise and material to be the cost price thereof, if such price be lower than the market price, or the then market price if that be lower than the cost price, and in determining the net amount of said assets there shall be deducted therefrom all ac-

counts and bills payable and other indebtedness owing by the Company.

So long as any of the preferred stock is outstanding, no dividend shall be declared or paid to the holders of the common stock, unless each and all of the accrued quarterly preferred dividends on the preferred stock, at the rate hereinabove set forth, shall have been paid or the money to pay the same set apart for that purpose, and unless all requirements with respect to the setting aside of the stipulated percentage of net surplus profits for the redemption of preferred stock shall have been complied with, and unless the net surplus profits of the Company applicable to dividends on the preferred stock then outstanding for the twelve (12) months preceding shall have been not less than one and one half (1½) times said preferred dividend requirements, and unless also the net quick assets of the Company are at such time at least equal to one hundred per cent (100%) of the outstanding preferred stock and are not reduced below such amount by the payment of such dividend upon the common stock.

The holders of the preferred stock shall have no voting power or participation in the management or control of the Company or be entitled to receive notice of stockholders' meetings, such voting rights being vested exclusively in the common stock, except in event of default by the company in the payment of four consecutive quarterly dividend installments upon the preferred stock. Upon any such default and during the continuance thereof and no longer the holders of the preferred stock shall have equal voting rights with the holders of the common stock, share for share.

No mortgage or other lien, other than a purchase money mortgage upon property subsequently acquired, shall be placed upon the real estate, plant or equipment of the Company, or any part thereof, nor shall any bonds, debentures, notes or other similar indebtedness having a maturity beyond one year be issued or created or guaranteed nor shall any additional preferred stock having priority over or parity with this issue of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) of preferred stock be issued, except in each case with the affirmative vote or assent in writing of the holders of three-fourths in amount of the preferred stock of this issue then outstanding.

The Company, so long as any of said preferred stock remains outstanding, shall cause a yearly balance sheet covering its assets and liabilities to be made by some competent certified public accountant approved by the Transfer Agent of the preferred stock, and will cause a duplicate of said audit to be delivered to said Transfer Agent not later than the 1st day of April in each year.

We further certify that at a meeting of the Board of Directors of said Company, held at the office of the Company on December 15, 1919, said increase of capital stock was approved by a resolution duly adopted by the unanimous vote of the Board of Directors of The Struthers Furnace Company.

IN WITNESS WHEREOF, said Vice President and Secretary acting on behalf of said Company, hereto subscribe said Company's name and affix the corporate seal, this December 15, 1919.

THE STRUTHERS FURNACE COMPANY

By W. C. RUNYON, JR.,
Vice President.

Attest: A. GROSSMAN, *Secretary.*

(Seal)

UNITED STATES OF AMERICA,
STATE OF OHIO,
OFFICE OF THE SECRETARY OF STATE.

I, Harvey C. Smith, Secretary of State of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the

CERTIFICATE OF INCREASE
OF
THE STRUTHERS FURNACE COMPANY

filed in this office on the 17th day of Dec. A. D. 1919 and recorded in Volume 236, Page 186, of the Records of Incorporations.

WITNESS my hand and official seal, at Columbus, this 17th day of Dec. A. D. 1919.

(Signed) HARVEY C. SMITH,
Secretary of State.

PLAINTIFF'S EXHIBIT NO. 3.

(Filed Dec. 17, 1919.)

Certificate of Amendment of Articles of Incorporation of The Struthers Furnace Company.

Corp. No. 13127.

WHEREAS, by proceedings of the stockholders of The Struthers Furnace Company duly had on December 15, 1919, the capital stock of the Company, consisting of ten thousand (10,000) shares of One Hundred Dollars ($100.00) each, was increased to twenty-two thousand five hundred (22,500) shares of One Hundred Dollars ($100.00) each, such increased capital stock consisting of twelve thousand five hundred (12,500) shares of the par value of One Hundred Dollars ($100.00) each of preferred stock, said preferred and common stock having designations, preferences, voting powers or restrictions or qualifications thereof as provided in the resolution of the stockholders increasing the capital stock as aforesaid;

NOW, THEREFORE, in order to make the Articles of Incorporation comply with the proceedings relating to increasing the capital stock,

BE IT RESOLVED, that the Articles of incorporation of The Struthers Furnace Company be and the same hereby are amended so that Article Fourth of the Articles of incorporation shall be and the same shall read as follows:

FOURTH: The capital stock of said Company, preferred and common, shall be Two Million Two Hundred and Fifty Thousand Dollars ($2,250,000.00) consisting of ten thousand (10,000) shares of common stock of the par value of One Hundred Dollars ($100.00) each, and twelve thousand five hundred (12,500) shares of preferred stock of the par value of One Hundred Dollars ($100.00) each, and the designations, preferences, and voting powers or restrictions or qualifications thereof attached to said preferred and common stock shall be as follows:

The holders of the preferred stock shall be entitled to receive from the surplus profits of the Company dividends at the rate of seven per cent. (7%) per annum, payable quarterly on the first day of February, May, August and November in each year, in preference to and

priority over any dividends upon the common stock, and no other dividends. Dividends on the preferred stock shall be cumulative from the quarterly dividend payment date next preceding the date of the original issue of each share thereof, so that if in any quarterly dividend period dividends at the rate of seven per cent (7%) per annum shall not have been paid on said stock, the deficiency shall be paid before any dividends shall be paid on the common stock.

The preferred stock shall be preferred both as to earnings and assets and, in event of any voluntary liquidation, dissolution or winding up of the Company, or upon any voluntary distribution of its assets other than by way of dividends from its surplus profits or redemption of its preferred stock as herein provided, the holders of the preferred stock shall be entitled to receive, for and in respect of such stock, the redemption price of One Hundred and Five Dollars ($105) per share, or if such liquidation, dissolution or winding up be involuntary, the par value of such stock, in each case plus all accrued and accumulated unpaid dividends thereon, before any amount shall be paid or any assets distributed to the holders of the common stock; and after such payment to the holders of preferred stock, all remaining assets of the Company shall belong to and be divided ratably among the holders of the common stock.

Except as herein provided, the holders of the preferred stock shall not be entitled to participate in any distribution of the profits or assets of the Company, either in money or in stock, and shall not be entitled to any subscription rights in any stock hereafter issued by the Company, whether common or preferred.

The preferred stock shall be subject to redemption in whole or in part, at the option of the Company, on any quarterly dividend paying date at One Hundred and Five Dollars ($105) per share plus all unpaid accrued and accumulated dividends thereon, such redemption to be upon the notice and in the manner hereinafter set forth with respect to the redemption of stock provided to be called and redeemed by the Company.

During the year beginning January 1, 1922, and during each year beginning January 1 thereafter, so long as any of said preferred stock remains outstanding, the Company shall set aside out of its surplus profits and apply to the redemption and retirement of said pre-

ferred stock as hereinafter provided, an amount in each year, for the first five (5) year period beginning January 1, 1922, of not less than ten per cent. (10%) for each year of the second five (5) year period beginning January 1, 1927, of not less than fifteen per cent. (15%) and for each year thereafter beginning January 1, 1932, of not less than twenty per cent. (20%) of the net surplus profits of the Company for the preceding year remaining after payment of preferred dividends and all taxes, including any State or federal income or excess profits taxes.

The percentage of net surplus profits so required to be set aside for the redemption and retirement of preferred stock shall be deposited by the company with the Transfer Agent of said stock on or before March 1st, of each year, beginning March 1, 1922, and shall be applied by said Transfer Agent to the redemption of preferred stock to be redeemed by the Company by purchase or call, as hereinafter set forth.

The redemption of preferred stock so required to be made from the net surplus profits of the Company as above provided can be made by the purchase by the Company in the market of preferred stock of said issue, provided the same can be purchased at a price not exceeding One Hundred and Five Dollars ($105) per share plus accrued and accumulated unpaid dividends thereon, but if the amount required to be redeemed cannot be so purchased for such price, the amount of preferred stock needed to exhaust the percentage of net surplus profits required to be set aside in such year for such redemption shall be called by the company and redeemed at the redemption price of One Hundred and Five Dollars ($105) per share plus accrued and accumulated unpaid dividends thereon. All stock redeemed, either by purchase or call, shall be forthwith cancelled and shall not be re-issued.

In all cases of redemption of preferred stock by call the company shall, if less than the entire amount of outstanding preferred stock is to be redeemed, select such stock by lot at least thirty (30) days prior to the date when the same is to be redeemed, notice of which call and redemption shall be given by registered letter directed to the stockholders whose stock is chosen for redemption, at their respective addresses then appearing on the books of the Company mailed at least thirty

(30) days prior to the date fixed for redemption, or in event the entire amount of preferred stock is to be redeemed, then such notice shall be mailed to all the holders of all the outstanding preferred stock, and on such redemption date all rights with respect to such stock, except the right to receive the redemption price therefor, shall cease and determine.

The selection by lot of stock for redemption shall be accomplished by placing together the names of all holders of said issue of preferred stock with the number of shares set forth after each name and these names shall be drawn by the Transfer Agent of the preferred stock. The entire amount of stock standing in each name thus drawn shall be selected for redemption before succeeding names are drawn. If the redemption of the required amount of stock necessitates the redemption of a portion only of the stock standing in the name last drawn, any such portion of stock standing in such last name as may be necessary to make up the required total shall be called and redeemed on the terms hereinabove provided.

So long as any of said preferred stock remains outstanding, the Company shall at all times maintain net quick assets in an amount not less than one hundred per cent. (100%) of the total par value of the preferred stock at such time outstanding. Quick assets shall be deemed to consist of cash, good accounts and bills receivable, supplies, raw material and merchandise consisting of goods manufactured and in process of manufacture, the value of such merchandise and material to be the cost price thereof, if such price be lower than the market price, or the then market price if that be lower than the cost price, and in determining the net amount of said assets there shall be deducted therefrom all accounts and bills payable and other indebtedness owing by the Company.

So long as any of the preferred stock is outstanding, no dividend shall be declared or paid to the holders of the common stock, unless each and all of the accrued quarterly preferred dividends on the preferred stock, at the rate hereinabove set forth, shall have been paid or the money to pay the same set apart for that purpose, and unless all requirements with respect to the setting aside of the stipulated percentage of net surplus profits for the redemption of preferred stock shall have been complied with, and unless the net surplus profits of the

Company applicable to dividends on the preferred stock then outstanding for the twelve (12) months preceding shall have been not less than one and one half (1½) times said preferred dividend requirements, and unless also the net quick assets of the Company are at such time at least equal to one hundred per cent. (100%) of the outstanding preferred stock and are not reduced below such amount by the payment of such dividend upon the common stock.

The holders of the preferred stock shall have no voting power or participation in the management or control of the Company or be entitled to receive notice of stockholders' meetings, such voting rights being vested exclusively in the common stock, except in event of default by the company in the payment of four (4) consecutive quarterly dividend installments upon the preferred stock. Upon any such default and during the continuance thereof and no longer the holders of the preferred stock shall have equal voting rights with the holders of the common stock, share for share.

No mortgage or other lien, other than a purchase money mortgage upon property subsequently acquired, shall be placed upon the real estate, plant or equipment of the Company, or any part thereof, nor shall any bonds, debentures, notes or other similar indebtedness having a maturity beyond one year be issued or created or guaranteed nor shall any additional preferred stock having priority over or parity with this issue of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) of preferred stock be issued, except in each case with the affirmative vote or assent in writing of the holders of three-fourths in amount of the preferred stock of this issue then outstanding.

The Company, so long as any of said preferred stock remains outstanding, shall cause a yearly balance sheet covering its assets and liabilities to be made by some competent certified public accountant approved by the Transfer Agent of the preferred stock, and will cause a duplicate of said audit to be delivered to said Transfer Agent not later than the 1st day of April in each year.

To the Secretary of State,
Columbus, Ohio.

The Struthers Furnace Company, by its Vice President and Secretary, hereby certifies that the foregoing

is a true copy of the original amendment of the Articles of Incorporation of The Struthers Furnace Company which was adopted by the vote of the holders of the entire subscribed and issued capital stock of the Company at a meeting of the stockholders held on December 15, 1919, at three o'clock p. m. notice of which was duly waived in writing by all stockholders as authorized by law, also that said amendment was duly adopted by resolution unanimously passed by the Board of Directors of The Struthers Furnace Company at a meeting duly called and held on December 15, 1919.

IN WITNESS WHEREOF, the Vice President and Secretary of The Struthers Furnace Company, acting for and on behalf of said Company, have hereunto set their names and caused the seal of said corporation to be affixed this 15th day of December 1919.

THE STRUTHERS FURNACE COMPANY

By W. C. RUNYON, JR.,
Vice President.

Attest: A. GROSSMAN,
Secretary.

UNITED STATES OF AMERICA,
STATE OF OHIO,
OFFICE OF THE SECRETARY OF STATE.

I, Harvey C. Smith, Secretary of State of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the

CERTIFICATE OF AMENDMENT
OF
THE STRUTHERS FURNACE COMPANY

filed in this office on the 17th day of December, A. D. 1919 and recorded in Volume 236, Page 180, of the Records of Incorporations.

WITNESS my hand and official seal, at Columbus, this 17th day of Dec. A. D. 1919.

(Seal) (Signed) HARVEY C. SMITH,
Secretary of State.

Mr. Wilson: We offer in evidence plaintiff's Exhibit 4, which is the original option contract entered into between Struthers Furnace Company and A. B. Leach & Company, Inc., dated April 15, 1922, and having attached to it certain memoranda with reference to the form of bonds which were to be issued and statements with reference to the business property, etc.

Thereupon, the document last above mentioned was received in evidence as plaintiff's Exhibit 4 and is as follows:

PLAINTIFF'S EXHIBIT NO. 4.

Agreement, dated April 15, 1922, between The Struthers Furnace Co. and A. B. Leach & Co.

AGREEMENT made this 15th day of April, 1922, between The Struthers Furnace Company, an Ohio corporation, hereinafter called the "Furnace Company," party of the first part, and A. B. Leach & Co., Inc., a New York corporation, hereinafter called "Leach Company," party of the second part.

WHEREAS, the Furnace Company intends to provide for an issue of One Million Five Hundred Thousand Dollars ($1,500,000) principal amount of First Mortgage and Collateral Trust 8% Sinking Fund Gold Bonds to be secured by a First Mortgage and Collateral Trust Indenture, both more particularly described in Exhibit "A," hereto annexed, and made a part hereof; and

WHEREAS, Furnace Company desires to make arrangements for the sale of said bonds, and for that purpose to give unto the Leach Company the right, privilege and option of buying said bonds or any part thereof and of forming a Syndicate to dispose of the same; and

WHEREAS, Leach Company desires the right, at its election, to buy said bonds or a part thereof and form a syndicate to dispose of the same;

NOW, THEREFORE, in consideration of the premises, the sum of One Dollar ($1.00) paid by Leach Company to Furnace Company, and other valuable considerations, the receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. The Furnace Company agrees to and hereby does give and grant unto Leach Company the right, privilege and option to purchase the whole or any part of the said issue of bonds at the price of 90 and accrued interest, and to form a syndicate to dispose of the same on such terms and conditions as Leach Company shall fix and determine.

2. The Furnace Company agrees that in the event Leach Company shall exercise its right to purchase any of said bonds and to form a syndicate to dispose thereof, that it will sell and deliver the same to Leach Company at the price of 90 and accrued interest.

3. The Furnace Company further agrees in the event that Leach Company shall exercise its option to purchase any of said bonds and form a syndicate to sell the same, that Leach Company shall pay for the first Eight Hundred Thousand Dollars ($800,000) par value of said bonds or any part at the price of 90 and accrued interest in cash upon delivery. In the event that further of said bonds are taken, Leach Company shall have the right to take and pay for any part of Four Hundred and Fifty Thousand Dollars ($450,000) par value thereof, on the following basis:

For every $1,500 par value of bonds at the price of 90 per cent and accrued interest there shall be paid ten shares of the Furnace Company's preferred stock at $85 per share and accrued dividend, the balance to be paid in cash.

The remainder of said issue of bonds, viz., Two Hundred and Fifty Thousand Dollars ($250,000), par value may be taken and paid for at the election of Leach Company at the price of 90 and accrued interest in cash upon delivery.

4. The Furnace Company agrees to furnish to Leach Company at once certified copies of earning statements approximately substantiating the figures given in Exhibit "A" hereto annexed for the years 1917 to 1921, both inclusive, also appraisals of the properties of the party of the first part, properly sworn to, substantiating the figures given in said Exhibit "A."

5. The Furnace Company agrees to submit to its stockholders and directors in due and proper form the matter of the authorization and issue of said bonds and

the giving of said mortgage to secure the same, and upon the approval thereof by said stockholders and directors to deliver to Leach Company certified copies of resolutions of its stockholders and directors authorizing said issue of bonds and the execution of the Indenture securing the same, together with a certified copy of the consent of the stockholders in respect thereto, and the opinion of its counsel as to the validity of said issue of bonds and the Indenture securing the same, and that all legal requirements have been complied with.

6. It is mutually understood and agreed between the parties hereto that if at the time of the issuance of said bonds, bonds of the same class bearing a lower rate of interest may be sold, the interest provided to be paid on said bonds may be less than eight per cent (8%), the rate of interest, however, to be left entirely to the discretion of Leach Company which shall have the right to fix the same.

7. It is mutually agreed and understood between the parties hereto that the option hereby granted unto Leach Company shall run for a period of two (2) weeks from the date of the receipt by it of the data and all papers hereinabove referred to and agreed to be so furnished by the Furnace Company.

8. Leach Company agrees, upon receipt of the papers aforesaid, to put forth its earnest efforts in an endeavor to form a syndicate to dispose of said bonds.

9. Leach Company agrees, in the event that it exercise the option aforesaid, to take and pay for the said bonds from time to time, either in cash and/or cash and stock, as provided in paragraphs 2 and 3 hereof, in the amounts as and when called for, within one hundred and twenty-five (125) days from the date of the exercise of said option by it.

10. This contract is subject to the ratification and approval of the authorization and issue of said bonds and mortgage by the stockholders and directors of the Furnace Company.

In Witness Whereof, the Furnace Company has hereunto caused this agreement to be signed in its name by its president, or one of its vice-presidents, and its corporate seal to be hereunto affixed, attested by its secretary, by order of its Board of Directors, and Leach

Company has hereunto caused the same to be signed in its name by one of its vice-presidents as of the day and year first above written.

THE STRUTHERS FURNACE COMPANY,

By W. C. RUNYON, JR.,

(Seal) *Vice Prest.*

Attest: A. GROSSMAN,

Secretary.

A. B. LEACH & COMPANY, INC.,

By H. C. ZWETSCH,

Vice President.

F. M. LAPP,

Witness.

EXHIBIT "A."

As Identified in Plaintiff's Exhibit 4.

4/4/22

$1,500,000

THE STRUTHERS FURNACE COMPANY

First Mortgage and Collateral 8% Sinking Fund Gold Bond.

Dated April 1, 1922 Due April 1, 1942

Authorized and to be outstanding $1,500,000.

Coupon bonds in denominations of $1,000 and $500, registerable as to principal. Interest payable April 1 and October 1. Redeemable in whole or in part at the option of the Company on 30 days' notice on any interest date up to and including April 1, 1925, at 110 and interest; up to and including April 1, 1930, at 107½ and interest; up to and including April 1, 1935, at 105 and interest, and thereafter at ½% less for each year elapsed.

Interest payable without deduction for the Normal Federal Income Tax not exceeding 2%. Pennsylvania Four-Mill Tax refunded upon application.

..... Trust Co., Trustee.

The following information is summarized from the accompanying letter of Mr. Walter C. Runyon, Sr., President of the Company:

Business and Properties. The business was founded in 1869 and incorporated under its present name in 1896. It has been under the same management for the past 35 years. The principal products are basic pig iron used exclusively in the production of high grade steel, and also foundry pig iron. The properties comprise 32 acres, located in one of the most important steel centers in which are situated plants of the Youngstown Sheet & Tube Company, Republic Iron & Steel Company, United States Steel Corporation and of other large steel manufacturing concerns. The equipment includes a modern blast furnace of 15,000 tons monthly capacity, a new power house and a pumping plant with a daily capacity of 18,000,000 gallons, casting machines, locomotive cranes, railroad equipment consisting of 126 steel hopper cars and switching locomotive, and a modern crushing plant for the profitable disposal of slag, a valuable blast furnace by-product. In addition the Company owns in equal partnership with the Cleveland-Cliffs Iron Company the Helmer-Wade mine containing in excess of 3,000,000 tons of iron ore.

Security. These bonds, in the opinion of counsel, will be secured by a direct first closed mortgage on the entire fixed property and equipment of the Company now owned, including the undivided one-half interest in the Helmer-Wade mines. They will be additionally secured by pledge of the entire capital stock of The Struthers Coal & Coke Company.

Valuation of Assets. Based on recent expert appraisal, the values of the fixed assets and equipment, and the interest in the Helmer-Wade mine and the equity in The Struthers Coal & Coke Company, aggregate in excess of $3,000,000, or more than twice the total amount of this issue of bonds. Net quick assets (after giving effect to the new financing) on the basis of the balance sheet prepared by Ernst & Ernst, Certified Public Accountants, as at December 31, 1921, were $1,529,442, or in excess of the total amount of this issue.

Earnings. Net profits for the five years and eight months ended December 31, 1921, after liberal depreciation charges, available for interest before Federal Taxes, averaged $367,529, or over three times the annual interest requirements on this issue of bonds, and after provision for Federal taxes such net profits averaged over $135,598. These averages include the unfavorable

year 1921, during part of which the Company did not operate. Net profits available for interest for the year 1920, before Federal taxes, were $272,004, and after Federal taxes $207,648.

SINKING FUND. The Company will set aside as a sinking fund in semi-annual installments, beginning April 1, 1925, 15% of the net earnings (after all proper deductions) for the retirement of these bonds by purchase in the market at not exceeding the then redemption price and accrued interest, or, if not so obtainable, by call by lot at the then redemption price and accrued interest.

PURPOSE OF ISSUE. The proceeds of this issue will be used for the reduction of current indebtedness, for additional working capital and for other corporate purposes.

APPRAISAL AND AUDITS. Appraisals of the building, land and equipment by Freyn, Brassert & Company of Chicago, who are among the foremost builders of blast furnaces in this country. Audit by Ernst & Ernst, Certified Public Accountants of Cleveland.

LEGALITY. All legal matters in connection with this issue, including preparation of the mortgage and bonds, supervision of the corporate action incident thereto, and other matters, are under the supervision of Messrs. Tolles, Hogsett, Ginn & Morley, of Cleveland.

PRICE: and interest, to yield ....%.

Mr. Wilson: We offer in evidence by consent of counsel for the defendant a copy of the minutes of the meeting of the stockholders of the Struthers Furnace Company on May 5, 1922, which relate to the making of a bond and a mortgage and the issuing of $1,500,000.00 bonds, and which include copies of the notice of the meeting and of the consents and proxies that were filed.

Thereupon, the document last above referred to was received in evidence as Plaintiff's Exhibit 5 and is as follows:

PLAINTIFF'S EXHIBIT NO. 5.

Minutes of Special Meeting of Stockholders of The Struthers Furnace Company.

Cleveland, Ohio, May 5th, 1922.

PURSUANT to notice duly given, according to the regulations and statutes, a special meeting of the common stockholders of the Company was held at the Company's principal office in the Citizens Building, Cleveland, Ohio, at 11 o'clock A. M., on the above date.

The President of the Company was chosen Chairman of the meeting and the Secretary of the Company was chosen Secretary of the Meeting.

The Secretary read the notice to the stockholders of the calling of the meeting, the same being as follows:

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS OF THE STRUTHERS FURNACE COMPANY.

Notice is hereby given that a meeting of the stockholders of the Company will be held at the office of the Company, Number 1106 Citizens Building, Cleveland, Ohio, at 11 o'clock A. M., on the 5th day of May, 1922, to consider and act upon the authorization, issue and sale of $1,500,000.00 principal amount, of First Mortgage Sinking Fund Eight Per Cent Gold Bonds of the Company, dated May 1, 1922, maturing May 1, 1942, and the execution and delivery of a First Mortgage and Collateral Trust Indenture, covering all the real estate and fixed assets and certain other property of the Company, to secure the payment of the principal and interest of said bonds. The issue and sales of said bonds and the giving of said mortgage have been unanimously approved by the Directors of the Company.

This is enclosed herewith a form of consent and proxy which we would ask you to sign and return if you cannot be present at the meeting.

By order of the Board of Directors.

(Signed) A. GROSSMAN,
Secretary.

The Secretary then reported to the meeting that copies of said notice had been mailed to all common stockholders of the Company on April 24, 1922.

The Chairman instructed the Secretary to call the roll which disclosed that common stockholders were present in person or by proxy as follows:

Name of Stockholder	Name of Proxy	No. of Shares
W. C. Runyon	In Person	5653
W. C. Runyon, Jr.,	In Person	200
W. C. Runyon, Jr., Trustee	In Person	29
R. E. Runyon	In Person	200
A. Grossman	In Person	238
Geo. A. Coulton	In Person	50
Sarah Gage Runyon	W. C. Runyon, Jr.	294
Bernice Agnew Runyon	W. C. Runyon	265
Jules G. Richards	W. C. Runyon	221
Alice Runyon Hart	W. C. Runyon	200
Alice Runyon Hart, Trustee	W. C. Runyon	29
Wm. Chisholm Stubbs	W. C. Runyon	65
Elisha Gray Stubbs	W. C. Runyon	65
I. Dreshsler	W. C. Runyon	33
L. S. Baldwin	W. C. Runyon	6.
Total Shares Present		7548

The Secretary then reported that the preferred stockholders of the Company, owning nine thousand seven hundred forty-one (9741) shares of the preferred stock of the Company, being more than three-fourths in amount of the preferred stock outstanding, had signed and delivered to the Secretary of the Company consents and proxies in the following form:

THE STRUTHERS FURNACE COMPANY.

Consent and Proxy.

The undersigned, a stockholder of The Struthers Furnace Company, hereby waives any and all notes required by the Company regulations or by law of a special meeting of the stockholders of said Company to be held at the office of the Company, Cleveland, Ohio, on a day and time to be hereafter fixed

by the Board of Directors, for the purpose of authorizing an issue of First Mortgage Bonds of the Company in a sum not to exceed $1,500,000 par amount, the payment of said bonds to be secured by a mortgage conveying the real estate, plant and equipment of the Company.

The undersigned also appoints W. C. Runyon, W. C. Runyon, Jr., and George A. Coulton, or any one or more of them with full power in each to substitute an attorney and proxy in his place and stead, true and lawful attorneys and proxies of the undersigned to appear and to vote, consent and act in respect to all stock of said Company standing in the name of the undersigned at said special meeting of stockholders or any adjournment thereof, on any and all questions that may be presented at said meeting, hereby ratifying and confirming all acts of said proxies or substitutes.

A majority of said proxies present at said meeting or any adjournment thereof may exercise the foregoing powers, and if only one proxy is present he may exercise the powers vested in said proxies or substitutes.

The undersigned hereby also consents and agrees that said Company be and through its directors and officers may authorize, issue and dispose of any issue of bonds of the Company not to exceed $1,500,000 in total par amount, bearing interest at not exceeding 8% per annum, payable semi-annually, maturing at not exceeding twenty years from the date thereof, and secure the payment of principal and interest of said bonds by a mortgage upon the real estate, plant and equipment of the Company, said bonds and mortgage to contain such terms and conditions and said bonds to be sold at such prices and for such purposes, all as may be determined by resolutions of the Board of Directors of the Company.

Witness the name of the undersigned April ..... 1922.

.....

Signed in presence of:

.....

There was then presented to the meeting the minutes of a special meeting of the Directors of the Company held this day prior to the stockholders' meeting and the same were read.

There was also presented to the meeting printed form of the first mortgage trust deed referred to in the minutes of the Directors' meeting. After discussion, on motion duly made by Geo. A. Coulton, seconded by R. E. Runyon, and carried by the affirmative votes of the common and preferred stockholders present at the meeting, there was passed a resolution in the following words and figures, to-wit:

WHEREAS, this Company is authorized by law to borrow money and contract debts for any purpose of its incorporation and to issue and dispose of its bonds or other obligations therefor and to secure the payment of said bonds or other obligations and the amount so borrowed by mortgage upon its property and franchises; and

WHEREAS, preferred stockholders of the Company, owning more than three-fourths in amount of the preferred stock outstanding, have assented in writing to the making of the first mortgage trust deed and to the issuance of the bonds hereinafter mentioned; and

WHEREAS, the Company owes the property described and referred to in the first mortgage trust deed hereinafter mentioned.

NOW, THEREFORE, BE IT RESOLVED, That the action of the Board of Directors of the Company this day had authorizing the execution and sale of first mortgage sinking fund eight per cent (8%) gold bonds of the Company in the total par amount of One Million Five Hundred Thousand Dollars ($1,500,000), dated May 1, 1922, being numbered and for the respective amounts as set forth in the form of said bonds, and the said execution and sale of said bonds by this Company, be and the same is hereby ratified, approved and confirmed by the stockholders of this Company.

BE IT FURTHER RESOLVED, that the payment of said bonds and the interest thereon shall be secured by a first mortgage trust deed from this Company to The Guardian Savings and Trust Company (of

Cleveland, Ohio,) as Trustee, covering, conveying and pledging to said Trustee all right, title and interest of the Company in and to the property, real and personal, of the Company mentioned and described in the first mortgage trust deed presented to this meeting, together with the income, rents, issues and profits of said property and property of the Company hereinafter acquired, all as set forth and according to all the terms and conditions in said first mortgage trust deed; and

Be It Further Resolved, that said first mortgage trust deed shall be in the form as authorized by said Board of Directors and as presented to this meeting and hereby ratified and approved, and that the same shall be signed on behalf of the Company by the President or Vice President of the Company and the corporate seal thereto affixed, attested by the Secretary or the Assistant Secretary of the Company and their signatures thereto shall be conclusive evidence as to the approval by the preferred and common stockholders of the Company of the form and substance of said first mortgage trust deed.

Motion unanimously carried.

The meeting adjourned.

A. Grossman,
Secretary.

April 24, 1922.

Notice of Special Meeting of Stockholders
of
The Struthers Furnace Company.

Notice is hereby given that a meeting of the stockholders of the Company will be held at the office of the Company Number 1106 Citizens Building, Cleveland, Ohio, at 11 o'clock A. M. on the 5th day of May, 1922, to consider and act upon the authorization, issue and sale of $1,500,000.00 principal amount, of First Mortgage Sinking Fund Eight Percent Gold Bonds of the Company, dated May 1, 1922, maturing May 1, 1942, and the execution and delivery of a First Mortgage and Collateral Trust Indenture, covering all the real estate and fixed assets and certain other property of the Company, to secure the payment of the principal and interest of

said bonds. The issue and sale of said bonds and the giving of said mortgage have been unanimously approved by the Directors of the Company.

This is enclosed herewith a form of consent and proxy which we would ask you to sign and return if you cannot be present at the meeting.

By order of the Board of Directors.

A. GROSSMAN,
Secretary.

THE STRUTHERS FURNACE COMPANY.

Consent and Proxy.

The undersigned, a stockholder of The Struthers Furnace Company, hereby waives any and all notice required by the Company regulations or by law of a special meeting of the stockholders of said Company to be held at the office of the Company, Cleveland, Ohio, on Friday, May 5th, 1922, at 11 A. M., for the purpose of authorizing an issue of First Mortgage Bonds of the Company in a sum not to exceed $1,500,000 par amount, the payment of said Bonds to be secured by a mortgage conveying the real estate, plant and equipment of the Company.

The undersigned also appoints W. C. Runyon, W. C. Runyon, Jr., and George A. Coulton, or any one or more of them with full power in each to substitute an attorney and proxy in his place and stead, true and lawful attorney and proxies of the undersigned to appear and to vote, consent and act in respect to all stock of said Company standing in the name of the undersigned at a said special meeting of stockholders or any adjournment thereof, on any and all questions that may be presented at said meeting, hereby ratifying and confirming all acts of said proxies and substitutes.

A majority of said proxies present at said meeting or any adjournment thereof may exercise the foregoing powers, and if only one proxy is present he may exercise the powers vested in said proxies.

The undersigned hereby also consents and agrees that said Company by and through its directors and officers may authorize, issue and dispose of any issue of bonds of the Company not to exceed $1,500,000.00 in total par amount bearing interest at not exceeding 8%

per annum, payable semi-annually, maturing at not exceeding twenty years from the date thereof, and secure the payment of principal and interest of said bonds by a mortgage upon the real estate, plant and equipment of the Company, said bonds and mortgage to contain such terms and conditions and said bonds to be sold at such prices and for such purposes, all as may be determined by resolutions of the Board of Directors of the Company.

WITNESS the name of the Undersigned, April ...., 1922.

.....

Signed in presence of:

.....

Cleveland, Ohio, May 5, 1922.

I, A. Grossman, Secretary of The Struthers Furnace Company, do hereby certify that at a special meeting of the common stockholders of said Company, duly called and held at the office of the Company, Citizens Building, Cleveland, Ohio, on the above date, notice of the time, place and objects of which meeting was duly given according to the regulations of the Company and the statutes, and at which meeting there was present in person or by proxy more than a majority of the outstanding common stock of the Company, there was duly and legally passed by the vote of all the common stock present a resolution in the following words and figures, to-wit:

WHEREAS, this Company is authorized by law to borrow money and contract debts for any purpose of its incorporation and to issue and dispose of its bonds or other obligations therefor and to secure the payment of said bonds or other obligations and the amount so borrowed by mortgage upon its property and franchises; and

WHEREAS, preferred stockholders of the Company owning more than three-fourths in amount of the preferred stock outstanding, have assented in writing to the making of the first mortgage trust deed and to the issuance of the bonds hereinafter mentioned; and

WHEREAS, the Company owns the property described and referred to in the first mortgage trust deed hereinafter mentioned.

NOW, THEREFORE, BE IT RESOLVED, that the action of the Board of Directors of the Company this day had authorizing the execution and sale of first mortgage sinking fund eight per cent (8%) gold bonds of the Company in the total par amount of One Million Five Hundred Thousand Dollars ($1,500,000.00), dated May 1, 1922, bearing interest at the rate of eight per cent (8%) per annum payable semi-annually maturing May 1, 1942, being numbered and for the respective amounts as set forth in the form of said bonds, and the said execution and sale of said bonds by this Company, be and the same is hereby ratified, approved and confirmed by the stockholders of this Company.

BE IT FURTHER RESOLVED, that the payment of said bonds and the interest thereon shall be secured by a first mortgage trust deed from this Company to The Guardian Savings and Trust Company (of Cleveland, Ohio) as Trustee, covering, conveying and pledging to said Trustee all right, title and interest of the Company in and to the property, real and personal, of the Company mentioned and described in the first mortgage trust deed presented to this meeting, together with the income, rents, issues and profits of said property and property of the Company hereinafter acquired, all as set forth and according to all the terms and conditions in said first mortgage trust deed; and

BE IT FURTHER RESOLVED, that said first mortgage trust deed shall be in the form as authorized by said Board of Directors and as presented to this meeting and hereby ratified and approved, and that the same shall be signed on behalf of the Company by the President or Vice President of the Company and the corporate seal thereto affixed, attested by the Secretary or the Assistant Secretary of the Company, and their signatures thereto shall be conclusive evidence as to the approval by the preferred and common stockholders of the Company of the form and substance of said first mortgage trust deed.

I further certify that stockholders owning more than three-fourths in amount of preferred stock outstanding have assented in writing to the making of said first mortgage trust deed and the issuance of said bonds.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Company to be affixed at Cleveland, Ohio, May 18th, 1922.

....., *Secretary.*

Special Meeting of Directors
of
The Struthers Furnace Company.

June 5th, 1922.

Minutes of special meeting of Directors of The Struthers Furnace Company held at 1115 Borden Bldg., New York on Monday, June 5th, at 11:30 o'clock A. M.

Present W. C. Runyon, W. C. Runyon, Jr. and A. Grossman.

President W. C. Runyon called the meeting to order, and A. Grossman, Secretary kept the Minutes.

The President reported that the meeting was called for the purpose of considering the opening of a banking account for the Company with the Seaboard National Bank (Uptown Branch) New York City, in the name and for the use of the Company.

The following Resolution was offered by W. C. Runyon, Jr. and after being duly seconded and put to a vote, was unanimously carried; "Resolved," that A. Grossman, Treasurer of this Company be, and hereby is instructed and empowered to open and keep an account of deposit and discount with the Seaboard National Bank (Uptown Branch) of New York City, in the name and for the use of the Struthers Furnace Company, to deposit in said bank to the credit of this Company from time to time, any and all moneys, checks, drafts, notes, acceptances or other evidences of indebtedness (whether belonging to this Company or otherwise) which may be or may hereafter come into its possession. Said Bank is hereby authorized to make payments from the funds of the Company on deposit with it upon and according to the check of the Company signed by W. C. Runyon,

President, A. Grossman, Treasurer, or R. H. Domer, Assistant Treasurer, and countersigned by W. C. Runyon, President, W. C. Runyon, Jr., Vice President, or R. H. Domer, Assistant Secretary. In every case, all checks of the Company to be signed and countersigned by two different officers of the Company. All notes of the Company to be signed by the Treasurer and countersigned by the President or Vice President.

The President also reported that a Resolution was in order to authorize the officers of the Company to rent a safe deposit box in the vaults of the Equitable Safe Deposit Company of New York for the safekeeping of valuable documents.

The Following Resolution was offered by W. C. Runyon, Jr., and after being duly seconded and put to vote, was unanimously carried; "RESOLVED," that the officers be and hereby are authorized to rent a safe deposit box in the vaults of the Equitable Safe Deposit Company of New York for the safekeeping of valuable papers and documents, and that access to the safe (No. 376) standing in the name of the Company in the vaults of the Equitable Safe Deposit Company of New York shall be, subject to the rules and regulations of the said Safe Deposit Company by any two of the following named officers.

W. C. Runyon, Jr. Vice President
A. Grossman Treasurer
R. H. Domer Asst. Treasurer."

There being no further business to come before the Board, the meeting adjourned.

A. GROSSMAN,
Secretary.

Mr. Wilson: By consent of counsel for defendant, we also offer in evidence minutes of a meeting of the Board of Directors held on May 5, 1922, authorizing the issue of bonds and the making of a mortgage for $1,500,000.00.

The document last above mentioned was thereupon received in evidence as Plaintiff's Exhibit 6 and is as follows:

PLAINTIFF'S EXHIBIT NO. 6.

Special Meeting of Directors of The Struthers Furnace Company.

Cleveland, Ohio, May 5th, 1922.

Pursuant to notice given according to the regulations, a special meeting of Directors of the Company was held at the Company's office, Citizens Building, Cleveland, Ohio, at ten o'clock a. m., on the above date, Directors being present as follows:

W. C. Runyon—W. C. Runyon, Jr.,—R. E. Runyon Geo. A. Coulton—and A. Grossman.

The President presided and the Secretary kept the minutes.

The Chairman stated that for some time past negotiations had been had for the sale of an issue of first mortgage bonds of the Company in total principal amount of $1,500,000 and that said negotiations had been completed and he presented to the meeting a form of first mortgage trust deed for the purpose of securing the payment of the principal and interest of said bonds.

The Secretary then stated that stockholders owning nine thousand seven hundred forty-one (9741) shares of the preferred stock of the Company, being more than three-fourths in amount of the preferred stock outstanding, had assented in writing to the issuance of bonds and the making of a mortgage to secure the same as hereinabove set forth and said assents were presented to the meeting and were ordered preserved in the Company's files.

The mortgage trust deed was read and considered and there was introduced by Geo. A. Coulton, a resolution in the following words and figures, to-wit:

> WHEREAS, this Company is authorized by law to borrow money and contract debts for any purpose of its incorporation and to issue and dispose of its bonds or other obligations therefor and to secure the payment of said bonds or other obligations and the amount so borrowed by mortgage upon its property and franchises; and
>
> WHEREAS, preferred stockholders of the Company, owning more than three-fourths in amount of the preferred stock outstanding, have assented in

writing to the making of the first mortgage trust deed and to the issuance of the bonds hereinafter mentioned; and

WHEREAS, the Company owns the property described and referred to in the first mortgage trust deed hereinafter mentioned,

NOW, THEREFORE, BE IT RESOLVED, that the President or Vice-President and Secretary or Assistant Secretary of the Company be and they are hereby authorized and directed to make, execute and sell the first mortgage sinking fund eight per cent (8%) gold bonds of the Company in the total par amount of one million five hundred thousand dollars ($1,500,000), dated May 1st, 1922, to be payable May 1, 1942, in gold coin of the United States of America of or equal to the present standard of weight and fineness, to bear interest at the rate of eight per cent (8%) per annum, payable semi-annually on the first day of May and November in each year from the date thereof until paid in the gold coin aforesaid, evidenced by coupons attached to said bonds executed by the facsimile of the signature of the Treasurer of the Company, both principal and interest to be payable at the principal office of The Guardian Savings and Trust Company, in the City of Cleveland, Ohio, which bonds, subject to the necessary variations in the distinguishing characteristics thereof, shall be substantially as follows:

(FORM OF BOND)

BE IT FURTHER RESOLVED, that to secure the prompt and punctual payment of the principal and interest of said bonds the President or Vice President, and Secretary or Assistant Secretary of the Company are hereby authorized and directed to execute, acknowledge and deliver to The Guardian Savings and Trust Company (of Cleveland, Ohio), as Trustee, a first mortgage trust deed covering, conveying and pledging to said Trustee in trust all right, title and interest of the Company in and to the real and personal property of the Company mentioned and described in the first mortgage trust deed presented to this meeting, together with the income, rents, issues and profits of said property and property of the Company hereinafter acquired, all

as set forth and according to all the terms and conditions in said first mortgage trust deed; and

BE IT FURTHER RESOLVED, that said first mortgage trust deed shall be in the form this day presented to this meeting and hereby ratified and approved and that the same shall be signed on behalf of the Company by the President or Vice President of the Company, and the corporate seal thereto affixed, attested by the Secretary or Assistant Secretary of the Company, and their signatures thereto shall be conclusive evidence as to the approval by the Board of Directors of the Company of the form and substance of the first mortgage trust deed.

Director W. C. Runyon, Jr., seconded said resolution and a vote was thereupon had, Directors voting as follows:

Director W. C. Runyon—Aye.
Director W. C. Runyon, Jr.—Aye.
Director R. E. Runyon—Aye.
Director Geo. A. Coulton—Aye.
Director A. Grossman—Aye.

The Chairman thereupon declared the resolution carried.

There was then presented to the meeting a contract between the Company and A. B. Leach & Company, Inc., dated April 15th, 1922, with subsequent modifications covering the sale of the bonds above authorized. Said contract was considered and upon motion duly made, seconded and carried, was unanimously approved.

The meeting adjourned.

A. GROSSMAN,
Secretary.

(FORM OF BOND)

No. ..... $.....

UNITED STATES OF AMERICA

THE STRUTHERS FURNACE COMPANY

First Mortgage Sinking Fund Eight Per Cent. Gold Bond

Total Issue $1,500,000.

THE STRUTHERS FURNACE COMPANY, a corporation of the State of Ohio (herein called the Company), for

value received, promises to pay to the bearer, or if registered to the registered holder hereof,
Dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness, on May 1, 1942, and to pay interest thereon from May 1, 1922, until the principal sum is paid at the rate of Eight Per Cent (8%) per annum, payable semi-annually on the first day of May and the first day of November in each year, in like gold coin, on presentation and surrender of the coupons hereto annexed as the same severally mature, both principal and interest being payable at the principal office of The Guardian Savings and Trust Company (herein called the Trustee) in the City of Cleveland, Ohio, or at the option of said bearer or such holder at the office or agency of the Company in the City of Chicago, Illinois, and in the Borough of Manhattan in the City and State of New York.

This bond is one of a duly authorized issue of bonds of the Company, known as its First Mortgage Sinking Fund Eight Per Cent. Gold Bonds, (herein called the Bonds) dated May 1, 1922, limited to the principal amount of One Million Five Hundred Thousand Dollars ($1,500,000) at any one time outstanding, consisting of bonds numbered consecutively from M1 upwards, of the principal sum of One Thousand Dollars ($1,000) each, bonds numbered consecutively from D1 upwards, of the principal sum of Five Hundred Dollars ($500) each, and bonds numbered consecutively from C1 upwards, of the principal sum of One Hundred Dollars ($100) each. All of said bonds shall mature and become payable May 1, 1942, and are issued or to be issued by the Company pursuant to, under and in accordance with and are equally and ratably secured by a First Mortgage Trust Deed (herein called the Mortgage) dated May 1, 1922, duly executed and delivered by the Company to The Guardian Savings and Trust Company as Trustee, and filed for record in the office of the County Recorder of Mahoning County, Ohio, in which County the principal real estate and property of the Company thereby mortgaged is situated, to which Mortgage reference is hereby made for a description of the property thereby mortgaged, conveyed and pledged or assigned, the nature and extent of the security and the nature of the terms and conditions on which said Bonds are issued or to be issued and secured and the rights of the holders in respect thereof.

The interest on this Bond is payable without deduction for any Federal Income tax or taxes (except the excess, if any, of any such income tax or taxes over an aggregate in any cne year of Two per cent (2%) of the interest payable hereon) which the Company or the Trustee may be permitted or required to pay or retain therefrom under any present or future law. As provided in the Mortgage the Company will reimburse to the bearer, or if registered, to the registered holder hereof, any Pennsylvania personal property tax not exceeding four mills per annum of each dollar of the principal amount hereof which may be legally assessed upon this Bond or upon such bearer or registered holder by reason of his ownership hereof and paid by him, if application therefor be made by him as provided in the Mortgage.

The Bonds of this issue on and after May 1, 1925, are subject to redemption on any interest payment date at the option of the Company at par and a premium of seven and one-half per cent (7½%) and accrued interest up to and including May 1, 1930, and thereafter at par and a premium of five per cent (5%) and accrued interest up to and including May 1, 1935, and thereafter at par and a premium of five per cent (5%) less one-half per cent (½%) for and in respect to each twelve month period elapsed from and after May 1, 1935, and accrued interest upon thirty (30) days' notice and according to the terms and in the manner and with the effect provided in the Mortgage.

This Bond, beginning with April 1, 1925, is entitled to the benefits of a sinking fund to be created by the Company upon the terms and conditions set forth in the Mortgage.

This Bond shall pass by delivery unless registered in the owner's name on the books of the Company at the principal office of the Trustee in the City of Cleveland, Ohio, such registration being noted hereon as provided in the Mortgage. After such registration no transfer shall be valid unless made on the said books by the registered holder in person or by attorney, duly authorized, and similarly noted hereon; but this Bond may be discharged from registry by being in like manner transferred to the bearer and thereupon transferability by delivery shall be restored and this Bond may again, from time to time, be registered or transferred to bearer as before. Such registration shall not affect the negotia-

bility of the coupons which shall continue to be transferable by delivery. In case an event of default as defined in the Mortgage shall occur, the principal of all of said Bonds may become or be declared due and payable in the manner and with the effect provided in the Mortgage.

The holder of this Bond by the acceptance hereof agrees that no recourse shall be had for the payment of the principal or interest hereof against any incorporator, stockholder, officer or director of the Company, whether by virtue of any law or by the enforcement of any assessment, it being agreed that the Bonds are solely corporate obligations of the Company and no personal liability shall attach to incorporators, stockholders, officers or directors of the Company, any and all such personal liability being hereby expressly waived.

This bond and the coupons pertaining hereto shall not be entitled to any benefit under the Mortgage or become valid or obligatory for any purpose until it shall have been authenticated by the certificate of the Trustee under the Mortgage hereon endorsed.

IN WITNESS WHEREOF, The Struthers Furnace Company has caused this Bond to be signed by its President or a Vice President and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, and coupons for said interest bearing the facsimile signature of its Treasurer to be attached hereto, all in the City of Cleveland, State of Ohio, as of May 1, 1922.

THE STRUTHERS FURNACE COMPANY,

By .....
President.

Attest: .....
Secretary.

(FORM OF COUPON)

No. ..... $.....

On ....., 19..., unless the Bond hereinafter mentioned shall have been previously redeemed The Struthers Furnace Company will pay to the bearer at the principal office of The Guardian Savings and Trust Company in the City of Cleveland, Ohio, or at the option of the bearer at the office or agency of The Struthers

Furnace Company in the City of Chicago, Illinois, and in the Borough of Manhattan in the City and State of New York, on the surrender of this coupon ..... Dollars in United States gold coin, being six months' interest then due on its First Mortgage Sinking Fund Eight Per Cent. Gold Bond No. .....

.....

Treasurer.

(Form of Trustee's Certificate)

This is one of the Bonds described in the within mentioned Mortgage.

The Guardian Savings and Trust Company, Trustee,

By .....

Vice President.

(Registration)

Notice: Nothing can be written on this Bond except by the officers of The Guardian Savings and Trust Company, Trustee, or its successor in Trust, as Registrar without impairing its negotiability.

Date of Registry	In Whose Name Registered	Registrar
.....	.....	.....
.....	.....	.....
.....	.....	.....

Cleveland, Ohio. May 5, 1922.

I, A. Grossman, Secretary of The Struthers Furnace Company, do hereby certify that at a special meeting of the Board of Directors of said Company, duly called and held at the office of the Company, Citizens Bank, Cleveland, Ohio, on the above date, at which there was present and voting more than a majority of said Board of Directors, there was duly and legally passed by the yea and nay vote of the Directors a resolution in the following words and figures, to-wit:

Whereas, this Company is authorized by the law to borrow money and contract debts for any purpose of its incorporation and to issue and dispose

of its bonds or other obligations therefor and to secure the payment of said bonds or other obligations and the amount so borrowed by mortgage upon its property and franchises; and

WHEREAS, preferred stockholders of the Company, owning more than three-fourths in amount of the preferred stock outstanding, have assented in writing to the making of the first mortgage trust deed and to the issuance of the bonds hereinafter mentioned; and

WHEREAS, the Company owns the property described and referred to in the first mortgage trust deed hereinafter mentioned,

NOW, THEREFORE, BE IT RESOLVED, that the President or Vice-President and Secretary or Assistant Secretary of the Company be and they are hereby authorized and directed to make, execute and sell the first mortgage sinking fund eight per cent. (8%) gold bonds of the Company in the total par amount of One Million Five Hundred Thousand Dollars ($1,500,000), dated May 1, 1922, to be payable May 1, 1942, in gold coin of the United States of America of or equal to the present standard of weight and fineness, to bear interest at the rate of eight per cent. (8%) per annum, payable semi-annually on the first day of May and November in each year from the date thereof until paid in the gold coin aforesaid, evidenced by coupons attached to said bonds executed by the facsimile of the signature of the Treasurer of the Company, both principal and interest to be payable at the principal office of The Guardian Savings and Trust Company, in the City of Cleveland, Ohio, which bonds, subject to the necessary variations in the distinguishing characteristics thereof, shall be substantially as follows:

(INSERT HERE FORM OF BOND)

(See page 69)

BE IT FURTHER RESOLVED, that to secure the prompt and punctual payment of the principal and interest of said bonds the President or Vice President, and Secretary or Assistant Secretary of the Company, are hereby authorized and directed to execute, acknowledge and deliver to The Guardian

Savings and Trust Company (of Cleveland, Ohio), as Trustee, a first mortgage trust deed covering, conveying and pledging to said Trustee in trust all right, title and interest of the Company mentioned and described in the first mortgage trust deed presented to this meeting, together with the income, rents, issues and profits of said property and property of the Company hereinafter acquired, all as set forth and according to all the terms and conditions in said first mortgage trust deed; and

Be It Further Resolved, that said first mortgage trust deed shall be in the form this day presented to this meeting and hereby ratified and approved and that the same shall be signed on behalf of the Company by the President or Vice President of the Company, and the corporate seal thereto affixed, attested by the Secretary or Assistant Secretary of the Company, and their signatures thereto shall be conclusive evidence as to the approval by the Board of Directors of the Company of the form and substance of the First Mortgage trust deed,

In Witness Whereof, I have hereunto set my hand and caused the seal of the Company to be affixed at Cleveland, Ohio, May 19, 1922.

A. Grossman,
Secretary.

A. B. Leach & Company,
Investment Securities

New York.

62 Cedar St.,
New York,
April 27, 1922.

Struthers Furnace Company,
Cleveland, Ohio.

Dear Sirs:

We wish to confirm telephone conversation held with Mr. Walter C. Runyon, Sr., President of your Company, whereby the Sinking Fund of the proposed issue of $1,500,000 Struthers Furnace Company 1st Mortgage & Collateral 8% Sinking Fund Gold Bonds will call for the payment of 25% of the net earnings of the Company after all proper deductions are made instead of the 15% of the net earnings as previously agreed upon.

Therefore the price at which we are to take up such bonds as we exercise our option on is to be at the price of 90½% instead of 90%. Other provisions of said contract to remain in full force and effect.

We would thank you to kindly confirm the understanding and beg to remain

Very truly yours,

CB.AS A. B. LEACH & Co., INC.

(Here follows copy of contract of April 15, 1922, between the Struthers Furnace Company and A. B. Leach & Co., Inc. with respect to purchase of bonds of the former by the latter, and attached memoranda, both of which appear on pages 51 to 53 *supra*.)

Mr. Wilson: We offer in evidence the certificate filed by Tillotson and Wolcott Company and A. B. Leach & Company, Inc. filed with the Division of Securities of the Department of Commerce of Ohio, dated May 9, 1922, and a copy of the letter of exemption of the bonds under the law of the State of Ohio.

Thereupon, the documents last above mentioned were received in evidence as Plaintiff's Exhibits 7a and 7b respectively and are as follows:

PLAINTIFF'S EXHIBIT NO. 7-A.

Certificate.

STATE OF OHIO
DEPARTMENT OF COMMERCE
COLUMBUS

DIVISION OF SECURITIES
Norman E. Beck
Chief of Division
Bryan Cooper
Asst. Chief of Division

February 8, 1926.

TO WHOM IT MAY CONCERN:

This is to certify that the attached is a true and correct copy of the form No. 4 filed by A. B. Leach and Company under date of May 9, 1922 and also a true and correct copy of our letter of exemption qualifying $1,-

500,000.00 Gold Bonds of the Struthers Furnace Company.

(Seal) (Signed) BRYAN COOPER.

Address All Communications to Division of Securities, Columbus, Ohio.

PLAINTIFF'S EXHIBIT NO. 7-B.

Form No. 4 and Letter of Exemption of Bonds.

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

FORM No. 4.

(Sec. 6373-9 10 and 14)

The statement and information herein set forth is directed to the Chief of Division of Securities of the State of Ohio, under the Act passed by the Legislature of the State of Ohio, on the 28th day of April, 1913, as amended February 6, 1914, as amended May 20, 1915, as amended March 21, 1917, as amended May 17, 1921, and as amended April 30, 1923, entitled "An Act to regulate the sale of stocks bonds, etc., etc., concerning the securities of (1) The Struthers Furnace Company, a corporation, ...
Organized under the laws of .....
Said securities are (2) $1,500,000.00 First Mortgage Sinking Fund 8% Gold Bonds .....

1—Has the issuance of these securities been approved by the public service commission or like body of any state of the United States or any Province of the Dominion of Canada?.....
If so, where? .....

2—Is the disposal to be made by or on behalf of an underwriter who, in good faith and not for the purpose of avoiding the provisions of this Act, purchased the securities paying therefor in cash or its equivalent, before any attempt is made to dispose of them, not less than ninety per centum of the price at which the securities will be disposed of? Yes.

3—Are the securities those of a common carrier or of a company organized under the laws of this state and engaged principally in the business of manufacturing, transportation, coal mining or

quarrying, and is the whole or a part of the property upon which such securities are predicated within this state and is such company an actual going concern having been engaged in its principal business for a period of one year or more and having no obligations which are past due and unpaid? Yes.

4—Are the securities those of a real estate or building company and is all of the property upon which such securities are predicated, located in Ohio? .....

5—Has the information regarding these securities, required on pages 2 and 3, been filed by any other licensee? If so, by whom?

6—Have actual current sales of these securities at prices quoted, been, from time to time, for not less than one year next preceding this disposal, published in the tabulated market reports of the news columns of a daily newspaper published and of general circulation in this State? .....

7—Is the disposal to be made for a commission of less than one per centum of the par value thereof, by a licensee who is a member of a regularly organized stock exchange having an established and lawfully conducted place of business in this state, regularly open for public patronage as such? .....

8—Are the securities those of a taxing subdivision of any state, territory, province or foreign government, and the obligation of the entire taxing subdivision payable out of the proceeds of a general tax? .....

The above statements are true to the best of ..... knowledge and belief and are made for the guidance of the Chief of Division

(3) TILLOTSON AND WOLCOTT CO.
(Signed) JULIAN W. TYLER, *Secretary.*
(Sign Here) A. B. LEACH AND COMPANY, INC.
(Signed) H. L. ZINTSCH (?)
Vice Pres.

(1)—Insert the name and location of Issuer.

(2)—State kind and amount of the issue and selling price.

(3)—Signature of license dealer.

The information set forth in the following statement of facts is made to the Chief of Division under an act of the Legislature of Ohio passed April 28, 1913, entitled: "An act to regulate the sale of bonds, stocks, and other securities and of real estate not located in Ohio, and to prevent fraud in such sales," as amended February 6, 1914, as amended May 20, 1915, as amended March 21, 1917, as amended May 17, 1921, and as amended April 30, 1923. To the Chief of Division of Securities:

The name of the issuer is The Struthers Furnace Company Organized under laws of .....
The principal office is located at Cleveland, Union Trust Building, State of Ohio.

The names of the officers, directors or partners are:

W. C. Runyon, President
W. C. Runyon, Jr. Vice President
A. Grossman, Secretary

DIRECTORS

W. C. Runyon
W. C. Runyon, Jr.
A. Grossman
G. A. Coulton
R. E. Runyon.

The following statement in general detail, correctly exhibits the resources and liabilities, surplus and capital stock of the issuer, as of a date as late as the close of the last fiscal year, and of its gross income, expenses, net earnings and fixed charges, for one year last prior thereto, or for such time as the issuer has been in business if less than one year.

Resources.	Dollars	Cts	Liabilities	Dollars	Cts.
Bills receivable,			Capital paid up		
Real estate,			Surplus		
Personal property,			Undivided profits,		
Stocks, bonds and other securities,			Bills payable,		
Merchandise			Accounts payable		
Cash on hand,			Bonded indebtedness,		
Due from banks,			Encumbrance on real estate or plant,		
Accounts receivable,					
Judgments,					
Total			Total		

The following is a pertinent description of the securities and the purpose of the issue. The securities within described are to be issued for the purpose of refunding corporate indebtedness and provide capital and for other corporate purposes.

State of Ohio
Cuyahoga, ss.

I, W. C. Runyon, President, and I, A. Grossman, Secretary, of the above-named corporation, do solemnly swear that the above is a full and complete statement of the resources and liabilities of said corporation as shown by the books of the same, and that said statement and the several matters and things contained in this statement are true in every particular, to the best of my knowledge and belief.

(signed) W. C. Runyon,
President.

(signed) A. Grossman,
Secretary.

Subscribed and sworn to before me, this 6th day of May, A. D. 1922.

(signed) Frank H. Lunn,
(Seal) *Notary Public.*

(My commission expires ..... 192...)

Balance Sheet
of
The Struthers Furnace Company,
Cleveland, Ohio.
At the Close of Business December 31, 1921.

Assets

Cash on hand	2,939.20
U. S. Government Securities and War Saving Stamps	49,096.97
Accounts receivable-customers	41,020.48
Inventory	1,397,819.97
Life insurance cash surrender value	29,350.00

Railroad equipment less allowance for depreciation	330,518.34	
Personal and miscellaneous accounts receivable, etc.	153,184.76	
Investments, Struthers Coal and Coke Company stock and interest in ore mines	653,347.39	
Real estate, furnace plant and equipment, etc. less allowance for depreciation	1,035,879.57	
Deferred	132,245.79	
		$3,825,402.47
LIABILITIES		
Notes and accounts payable accrued taxes, etc.	1,085,784.44	
Open account, Struthers Coal and Coke Company	268,680.72	
Reserves for contingencies, etc.	138,686.78	
Capital stock	2,250,000.00	
Surplus	82,250.53	
		$3,825,402.47

COPY

May 9, 1922.

In Re: Struthers Furnace Company

Gentlemen:

We acknowledge receipt of the application of the Tillotson and Wolcott Company and A. B. Leach and Company, Inc., for the exemption of $1,500,000.00 First Mortgage Sinking Fund 8% Gold Bonds of the above named company, a company organized and existing under and by virtue of the laws of the State of Ohio.

The application is made under the provision of 6373-14 (e) upon the grounds that disposal is to be made by or on behalf of an underwriter who in good faith and not for the purpose of avoiding the provisions of this act, purchased the securities paying therefor in cash or its equivalent before any attempt is made to dispose

of them, not less than ninety percentum of the price at which the securities will be disposed of, and that the securities are those of a common carrier or of a company organized under the laws of this state to engage principally in the business of manufacturing, transportation, coal mining or quarrying and the whole or a part of the property upon which such securities are predicated is located within this state.

This application is correct as to form, conforms to the law and has been placed on file with this Division.

Yours very truly,

A. L. STEWART,
Chief of Division.

Per

HSM:ED *Exemption Clerk*

Tolles, Hogsett, Ginn & Morley,
12th Floor Williamson Building,
Cleveland, Ohio.

Thereupon, the plaintiff called as a witness WALTER C. RUNYON who, being first duly sworn, testified as follows on DIRECT EXAMINATION by Mr. Wilson:

My name is Walter Clark Runyon. I was the President of the Struthers Furnace Company before it was put into the hands of a receiver. I have never retired from that office. I was President prior, during and subsequent to the years 1921 and 1922 and also a large stockholder of the company. The purpose of the company's negotiating a bond and mortgage on its property was to pay its loans. We were then indebted to creditors and to the banks. I personally opened negotiations with the representatives of Leach & Company for the handling of the bond issue on the company's property. The negotiations began, I think, in the Fall of 1921. We were not able to get together for a loan at that time.

Q. What proposals were made by you and what proposals were made by them at that time?

Mr. Johnston: We will object to that, if the Court please. We are dealing with a written contract in this case, and proposals leading up to a making of a definite contract would be incompetent.

The Court: Yes. I don't know that that would be a good ground of objection, considering the nature of the action we have here. Objection to the question as it now stands will be sustained.

The Witness: Our negotiations in the Fall of 1921 were with Mr. Zwetsch, who was the Vice President and Cleveland representative of A. B. Leach & Company, Inc. The negotiations at that time were oral.

Q. You may go on now and state what conversations you had with Mr. Zwetsch at that time with reference to the negotiation of a bond issue or the handling of a bond issue by Leach and Company?

Mr. Johnston: I desire to renew my objection, if the Court please. That it is an attempt to modify the terms of the written contract by inserting some provision not in the nature—

Mr. Wilson: Oh, no.

The Court: It is not necessary to argue an objection to evidence until the Court invites it. The objection will be overruled and exception allowed and the testimony will be received. It may or may not be material. By that I mean that it may not add anything to the plaintiff's case as he claims it.

The Witness: Our negotiations took place in Cleveland. They were partly between my son, who was Vice President of the company, and Mr. Zwetsch, and partly between Mr. Zwetsch and me. I was not always present when negotiations were had between Mr. Zwetsch and my son. We dropped the matter in 1921 because the terms and conditions were not satisfactory to us.

Negotiations were resumed in the Spring of 1922, during the month of March or April. They were had with Mr. Zwetsch and with Mr. Campbell and Mr. Leach. Mr. Campbell is one of the Vice Presidents of A. B. Leach & Company, Inc. I had conversations with both of those gentlemen in New York. Mr. Leach is the President of the company. Those conversations were had in the office of A. B. Leach & Company, Inc., 62 Cedar Street, New York City.

Q. I wish you would give to the Court, as nearly as you can recollect, the substance of your conversation with them relating to the terms and conditions of the making of this option contract?

Mr. Johnston: It will not be necessary for us to renew our objection?

The Court: No, I will receive it, not for the purpose of modifying the terms and conditions of the written agreement afterward entered into, but for the light, if any, it may throw on the knowledge, motive or anything of the contracting parties. That may become quite material or it may remain immaterial; I don't know; but I think it is best to try the case just as I have indicated. (To the witness) The request is, Mr. Runyon, when you give conversations, or the substance of them, that you give the persons present and the persons who made the observations. Of course if they were all one conversation and all with one person, that is something different.

The Witness: Your Honor, the negotiations, I don't know as I can give you any definite date. As to the first negotiations, they were conducted generally, I might say by my son with Mr. Zwetsch, who was the Cleveland representative, and then submitted to me.

The Court: That was in the fall of 1921?

The Witness: In the fall of 1921.

The Court: And they were rejected because you didn't like the terms?

The Witness: Yes, sir.

The Court: Now you are down when you took up the negotiations in the spring of 1922. Approximately when was that?

The Witness: I would say perhaps in April.

The Court: And in what way were they reopened, with whom and by whom?

The Witness: The subject was broached probably first here to Mr. Zwetsch and then my son came from New York and with me we went to the office of A. B. Leach and Company in New York and conducted our negotiations with Mr. Campbell and Mr. Leach.

The Court: And there were present then in addition to Mr. Campbell and Mr. Leach, yourself and your son?

The Witness: Yes, sir.

Q. Now, go on with the conversation, what was said with reference to this bond issue? A. The first negotiation, I believe, provided no definite sum to be—or def-

inite amount of bonds to be taken from the company, and Mr. Campbell subsequently agreed to take and pay for $800,000.00 of bonds; that is to say, that remained an option; it was not definite so far as an agreement to take them was concerned, but if they did take them they were to be paid for in cash up to the amount of $800,000.00. That agreement cleared the objection to the proposal of the fall of '21. Furthermore, there was a slight change in the price by changing the terms of the agreement in the mortgage as to the remainder of bonds from 15 per cent of the earnings, net earnings, to 25 per cent. That increased the price to ninety and a half of the bonds. Then it was agreed that the $450,000.00 worth of bonds following the $800,000.00 could be paid for at the rate recited in the contract.

The Court: Paid for by the exchange of stock?

The Witness: In that way.

The Court: Both of these propositions were carried into the written agreement, were they not?

The Witness: Yes, sir.

Q. Now, what was said, if anything, in that conversation with reference to what Leach and Company were to do by way of voting their preferred stock to make the mortgage possible?

The Court: Objection is made to that and objection overruled and exception allowed. The testimony may be recorded. What was said on that subject in your negotiation?

A. The agreement was that they were to give us their proxies to vote the preferred stock.

The Court: How much stock was stated by them?

The Witness: It was three thousand shares, possibly a little more; I think they had more than that, but certainly it was three thousand; but three thousand were turned in, I believe, to the trustee. The books of the company will show that.

The Court: Certainly, but whatever it was, it was the subject of discussion that day?

The Witness: Yes, sir.

The Court: Now, was there anything said in those negotiations at the office of Leach and Company, New York, as to the use which you expected to make or it was

intended to be made of the cash that was to be realized from the bonds?

The Witness: I think not.

The Court: Had you at that time when you were talking with Mr. Leach and Mr. Campbell in New York, procured the waivers of the preferred stockholders to the proposed bond issue?

The Witness: We had not; we could not take it up with the stockholders until we knew we could sell the bonds.

The Court: At the time this discussion was had with them, you had not procured any given number of waivers?

The Witness: I think not.

The Court: Do you know who afterwards performed the service of procuring the waivers?

The Witness: We sent out letters to our preferred stockholders and they sent up their proxies.

The Court: And all of them came back and were recorded as waived?

The Witness: Yes.

The Court: So the records will give that information?

The Witness: Yes.

The Court: As to the percentage of waivers?

The Witness: Exactly.

Q. Mr. Runyon, let me ask you whether or not the paper I show you is an original paper sent out by Leach and Company also to your preferred stockholders at the time that you were accumulating these proxies? A. I can't answer; I don't know; I don't know whether that was sent them or not.

Q. Now Mr. Runyon, what I want to know is, what if anything was said between you and Mr. Campbell at this interview prior to the making of this, giving of this option contract, as to the condition of executing this option with you or with them, provided that these people would give you their proxies or consent to the making of this mortgage?

Mr. Day: He has answered that, Your Honor. I object.

The Court: Anything that was said on that subject, you may repeat what you have already said or anything in addition to it.

A. They were to give us their proxies on this question—

The Court: Did you say anything other than or in addition to that on that subject, or was anything said by them on that subject?

The Witness: They wanted certain information; they wanted the opinion of our counsel; we told them we would furnish it, and we did furnish it.

The Court: The question now is with reference to the waiving of their rights, also what they said to you and what you said to them on that subject, if there is anything in addition to what you have already said, if you can recall.

The Witness: Well, I think it was understood that they, owning thirty per cent of the preferred stock, it would be impossible for us to secure seventy-five per cent consent of waivers of the preferred stockholders without their consent.

The Court: Was three thousand shares thirty per cent of the total outstanding preferred stock?

The Witness: No, let me see. No, I am mistaken there, there was $1,250,000.00, and they owned a little over three thousand shares.

The Court: Three thousand would be something less than a fourth?

The Witness: Yes, sir.

The Court: Well, all that was said on that subject you may give, and if you can't recall anything more and there is something that you know that he knows that you want to draw his attention to, do so. Go on.

Q. Now, just listen to my question, Mr. Runyon. What did they say to you about giving you their consent to this mortgage, and how was that dependent upon your giving them the option to exchange stock for bonds? What was said between you gentlemen on that subject, you and Mr. Campbell? A. It was understood that we were to send them this option, and upon receipt of the option they were to send us their proxies.

Q. What was said about it? You have given us their understanding of the conversation; just what was

said between you and him, if anything, with reference to your giving the option being dependent upon their consenting to this mortgage?

Mr. Day: I object to the form of this question. He has already answered it.

The Court: No, there is no assumption that this witness is friendly to one side rather than the other. So if he knows anything we want to get at it. A. I don't know as I understand just what do you mean by what was said. The negotiation was carried on in the usual ordinary manner, and the understandings between us, that we were to furnish them with legal opinion and furnish them with statements; we were to send them this option authorized by the board of directors; they were to send us their proxies to be voted at the meeting.

Q. And what was said by you to him, if anything, as to your unwillingness to give an option unless you could get his consent to the making of the mortgage? A. I don't know as that was ever brought out.

Q. You simply agreed that you would give the option to them to exchange stock for bonds, and they would in turn send you their consent for the three thousand shares to vote on the mortgage? A. Yes, sir.

Q. Was that about the upshot of the conversation? A. It was.

Cross Examination of the witness, Walter C. Runyon, by Mr. Day:

As a result of those talks that I had at New York with Mr. Campbell and Mr. Leach, the written option contract was entered into. As I understood it, it was necessary to get the consent of three-fourths of the preferred stockholders, in order to put on the bond issue. Mr. Campbell wanted an opinion of counsel as to whether this was proper in every way. I said that I had asked counsel about it and that he said it was proper. They asked me for some statements, and I furnished them. I furnished them an appraisal made by Brassert and Company; also the Lyon appraisal. The document you hand me, marked Defendant's Exhibit A, is the Lyon appraisal which I furnished to Leach & Company.

The document last mentioned was thereupon received in evidence as defendant's Exhibit A. Said document is as follows:

DEFENDANT'S EXHIBIT NO. A.

Lyon Appraisal.

ARTHUR M. LYON,
REAL ESTATE, LUMBER.
Struthers, Ohio.

STATE OF OHIO,
COUNTY OF MAHONING, SS.

Before me a Notary Public in and for said County and State, personally appeared Arthur M. Lyon who being duly sworn deposes and says, I am in the Real Estate business and have been dealing in Real Estate commercially and otherwise in this community for the last twenty years and believe that I am qualified to give a fair value appraisal of any parcel of Real Estate in this community, I do further say that the parcel of land now owned by the Struthers Furnace Company of Cleveland, Ohio, and consisting of 32.306 Acres located in the City of Struthers and being parts of O. L. 21 and O. L. 23 according to the latest enumeration of lots in the said City, should be valued at the rate Fifteen thousand Dollars ($15000.00) per acre. I have offered this appraisal after careful consideration and do say that it is a true appraisal as I verily believe.

(Signed) ARTHUR M. LYON.

Sworn to and Subscribed in my presence at Struthers, Ohio, this 29th day of April 1922.

(Signed) VICTOR H. GOOD,
Notary Public.

I don't know whether the document marked Defendant's Exhibit B 1-5 and signed by Brassert and Company is the Brassert appraisal which I handed Leach and Company about that time. It is one like it. The document you show me has the original signature, but my impression is that instead of being signed Freyn-Brassert and Company it was signed by H. A. Brassert, who was retained for this appraisal, and not Freyn-Brassert and Company. That is my recollection. I may be mistaken, but Brassert did make the appraisal.

The document marked Defendant's Exhibit B 1-5 was thereupon received in evidence, said document being as follows:

DEFENDANT'S EXHIBIT NO. B-1 TO 5.

Brassert Appraisal.

DEFENDANT'S EXHIBIT NO. B-1.

FREYN, BRASSERT & COMPANY
Engineers
STRUTHERS FURNACE COMPANY

Appraisal of Blast Furnace Plant at Struthers, Ohio.

Items	Replacement Value	% Depreciation	Sound Value
1. Blast Furnace Stack Excavation, concrete reinforcing steel & anchor bolts, brick in foundations, iron & steel work, cooling copper, brick lining, bosh piping	118,580.00	22.5	92,000.00
2. Skip Hoist— Excavation, concrete reinforcing steel & anchor bolts, steel caisson, incline, steel, operating mechanism, skip cars, four, hoist engine steam hoist engine house	35,765.00	23.4	27,400.00
3. Gas Cleaning System Including offtakes, downcomers, dust catcher & gas washer, excavation, concrete, reinforcing steel & anchor bolts, iron & steel work, brick linings, woodwork in washer, water piping	43,745.00	17.0	36,300.00
4. Cast House Excavation, concrete reinforcing steel & anchor bolts, building, paving & fill, iron & cinder runners, mud gun & tools	35,120.00	22.5	27,200.00

DEFENDANT'S EXHIBIT NO. B-2.

Items	Replacement Value	% Depreciation	Sound Value
5. Stoves Excavation, concrete & Masonry in foundations reinforcing steel & anchor bolts, iron & steel work, brick linings, water piping	166,220.00	30.2	116,000.00
6. Gas & Air Mains Foundations, iron & steel work	38,600.00	19.7	31,000.00
7. Pouring Equipment Car Haul, hot metal cars, 9-25 ton, pig machine, complete ladle house	80,150.00	32.7	53,800.00
8. Slag Disposal Excavation, concrete & masonry steam shovels car haul	41,075.00	27.8	29,600.00
9. Stock Bins & Trestles Excavation, concrete, reinforcing steel & anchor bolts, fill in approaches, iron & steel in bins, timber structural steel, scale cars, scale car track, and conductors.	152,200.00	30.	106,500.00
10. Boiler Plant Excavation, concrete, boilers sootblowers on 2-503 H. P. rusts-brick settlings, platforms, stacks & breechings, gas burner equipment steam & water piping, steam.	154,850.00	23.0	119,000.00

DEFENDANT'S EXHIBIT NO. B-3.

Items	Replacement Value	% Depreciation	Sound Value
11. Blowing Engine House Building, crane, foundations for equipment, blowing engines Weimer blowing engines—Todd blowing engines—Mesta Condensing equipment, feed water heaters & supports, boiler feed pumps, oil filters, gauges, etc. piping	337,100.00	26.	249,500.00
12. Power Plant Building, foundations for equipment, engine generator 200-Kw—D. C. Engine generator 400-Kw—D. C. Engine generator M. G. set —40 Kw. switchboard, air compressor, oil filters, gauges & instruments, piping.	86,100.00	18.0	70,600.00
13. Pump House (New) Foundations, building above foundation, crane & pumps & motors, water screens ventilating fan, piping	72,500.00	8.0	66,700.00
14. Pump House (Old) Building, pumps, suction well, water screens, piping	16,200.00	46.3	8,700.00
15. Stand Pipe Excavation, concrete reinforcing steel & anchor bolts, standpipe	12,495.00	13.	10,890.00

DEFENDANT'S EXHIBIT NO. B-4.

Items	Replacement Value	% Depreciation	Sound Value
16. Main Water Lines	17500.00	20.	14,000.00
17. Sewers	9,700.00	22.	7,500.00
18. Main Steam Lines	3,200.00	25.	2,400.00
19. Electrical Transmission & Yard Lighting	10,300.00	10.	9,270.00
20. R. R. Track & Scale Track, turnouts, track scale & scale house	81,400.00	24.	61,800.00
21. Locomotive	20,000.00	15.	17,000.00
22. R. R. Cars	279,000.00	6.5	261,000.00
23. Locomotive Cranes — Bucket & Magnet	46,000.00	30.	32,200.00
24. Auto Trucks	3,000.00	50.	1,500.00
25. Instruments & Laboratory Equipment	2,500.00	30.	1,750.00
26. Shop Tools & Equipment	9,200.00	50.	4,600.00
27. Fire Protection Equipment	600.00	17.	500.00
28. Fence	6,200.00	25.	4,650.00
29. Wagon Scale	1,800.00	20.	1,440.00

DEFENDANT'S EXHIBIT NO. B-5.

Items	Replacement Value	% Depreciation	Sound Value
30. Slag Plant Building, bins, Hoppers, & Chutes, machinery & conveying equipment	69,000.00	7.7	63,600.00
31. Thaw House	28,000.00	57.2	15,000.00
32. Shop Building	3,500.00	42.8	2,000.00
33. Office Building & Furniture	8,000.00	45.	4,400.00
34. Superintendent Residence	7,500.00	40.	4,500.00
35. Tenement Houses	11,000.00	50.	5,500.00
36. Lavatory	5,000.00	4.	4,800.00
37. Time Office, Tool & Store Houses & Miscellaneous small buildings	6,500.00	40.	3,900.00
38. Cement Mill Building	35,000.00	75.7	8,500.00
39. Stores	75,000.00	..	75.000.00
40. Engineering, general construction, expenses and contingencies	200,000.00		200,000.00
Total	$2,329,600.00	20.4	$1,852,000.00

FREYN, BRASSERT & Co.
Per H. A. Brassert
Chairman of the Board.

I furnished Brassert's appraisal about the same time the Lyon appraisal was furnished.

Q. Now, I am handing you next an audit report, marked for identification Defendant's Exhibit C, which purports to be an audit report of the Struthers Furnace Company, December 31st, 1921, of Ernst and Ernst; I will ask you if you furnished also Leach and Company with that about that time? A. I don't know whether we did or not.

Q. About the time you were having these talks and they were asking you for the statements and opinion of counsel? A. I have no doubt this is one of them.

The Court: Is there a date to that Ernst and Ernst audit?

The Witness: March 10, 1922. No, this one you have given me is December 31, 1920.

Mr. Day: They have got it audit report, Struthers Furnace Company December 31, 1921. That is evidently a typographical error.

Q. It is dated March 10, 1922? A. Yes.

Q. But nevertheless, that is one of the Ernst and Ernst reports? A. Yes.

The Court: Now, your statement is that you did submit an Ernst and Ernst audit to Leach and Company in connection with the option?

The Witness: Yes, sir.

Q. Now, I am going to have you look at another one, marked Defendant's Exhibit D, and on the outside of it it says, "Earnings, expenses and surplus account of the Struthers Furnace Company, Cleveland, for the period from May 1, 1911 to December 31, 1921," purporting to be a report from Ernst and Ernst. Is that one of the papers?

The Court: Did you furnish such a statement, to the best of your recollection?

The Witness: I don't know, Your Honor, whether we furnished it to them or not. I know such a statement was made.

Q. Were Ernst and Ernst your auditors? A. Yes, sir.

The Court: What is the date of that?

The Witness: This is covering a period from May 1, 1911, to December 31, 1921.

The Court: Is there a date on it when it was prepared?

The Witness: April 28, 1921.

Q. What was that date? A. April 28, 1921.

Q. That was about the time the negotiations were had and at the time you asked for these statements? A. No, I wouldn't say that.

The Court: No, it was '22 the statements were asked for.

The Witness: This was a record of the company's transactions from the period 1911 to 1921.

Q. I have another paper here, marked Defendant's Exhibit E, purporting to be a statement from Ernst and Ernst, certified public accountants, to Mr. W. C. Runyon, president of the Struthers Furnace Company, under date of April 10, 1922; I will ask you if that is not the one you gave to Leach and Company? (Handing to witness) A. Yes, sir.

Mr. Day: I offer those exhibits in connection with the cross examination of the witness.

Mr. Wilson: Let me ask a few questions first.

RE-DIRECT EXAMINATION.

By Mr. Wilson:

Q. Mr. Runyon, who transacted the business of forwarding these statements and so forth, to Leach and Company? Was it you personally? A. No, sir.

Q. Well, are you able to personally identify any of these papers as being the documents that were given to Leach and Company pursuant to their option to purchase? A. I can't say that I am, that I can. I know the statement was made up at our request, but to technically answer your question—I live in New York; I live in New York and have for twenty-five years.

The Court: You say these were made up at your request, either their request or your request?

The Witness: Both. We requested Ernst and Ernst to make up the statements, but they wanted them.

The Court: In what connection?

The Witness: In connection with this negotiation to show the summary of earnings of the company. This covers the years 1917, '18, '19, '20 and '21.

Mr. Henderson: I might suggest to Your Honor that the balance sheet that was contained in the application of Leach and Company for exemption of these bonds is the balance sheet set up in the Ernst and Ernst audit for December 31, 1921.

The Court: That would indicate the genuineness of the papers; whether they were transmitted by this man, they were transmitted by some one. There ought not to be any difficulty separating that out.

By Mr. Wilson:

Q. I will ask you, Mr. Runyon, were Leach and Company interested and active also in procuring an appraisement of your assets prior to the making of this mortgage, if you know? A. No.

Q. To refresh your memory, I refer you to a letter dated May 2nd, purporting to be from Leach and Company to the Struthers Furnace Company? (handing to witness) A. This letter is addressed to my son.

Q. Well, it is addressed to the Struthers Furnace Company? A. Struthers Furnace Company.

The Court: What knowledge has he on the subject? The letter will speak for itself, Mr. Wilson.

Q. Do you know anything about this letter? A. I do not.

The Court: Exhibits A, B, C and E, I think are competent.

Thereupon Defendant's Exhibits C and E were received in evidence, said Exhibits being, respectively, as follows:

DEFENDANT'S EXHIBIT NO. C.

AUDIT REPORT

THE STRUTHERS FURNACE COMPANY

CLEVELAND

DECEMBER 31ST, 1921

REPORT FROM

ERNST & ERNST

AUDITS AND SYSTEMS

C O N T E N T S

	Original Report	This Record
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INCOME & EXPENSE.....	11	115
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INVENTORY.....	14	119
OTHER ASSETS.....	15	121
PLANT AND EQUIPMENT.....	16	123
DEFERRED	17	125
NOTES PAYABLE.....	18	127

PRINTER'S NOTE:

In the Original Audit Report from which the ensuing pages were reproduced certain of the figures were typewritten with a red ribbon and others with a green one. For example:

On page 101 (original page 3) the figures in the right hand column, roughly underscored with a pen line, were red in the Original Report, while the totals (similarly underscored) in the other two columns were in green.

On page 103 (original page 4) the figures in the right hand column, roughly underscored with a pen line, were red in the Original Report, while the totals (similarly underscored) near the top of the other two columns were in green.

On page 105 (original page 4) the figures and words, roughly underscored with a pen line, were red in the Original Report.

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ERNST & ERNST

AUDITS AND SYSTEMS

TAX SERVICE

CLEVELAND

HANNA BUILDING

March 10th, 192

Board of Directors and Stockholders,
The Struthers Furnace Company,
Cleveland.

Gentlemen:-

We have audited the books of account and record STRUTHERS FURNACE COMPANY - CLEVELAND, for the year ende ber 31st, 1921, and submit herewith our report.

Below is set forth a condensed statement of th Liabilities of the Company at the close of business Dece shown in greater detail in the accompanying Balance Shee also being made with the corresponding items as of the c December 31st, 1920:

	DEC.31-1921	DEC.31-19
ASSETS		
CURRENT		
Cash	$ 2,939.20	$ 14,982
U. S. Government Securities	49,096.97	68,796
Notes Receivable	-o-	3,539
Accounts Receivable	41,020.48	440,129
Inventory	1,397,819.97	1,954,023
Life Insurance (Cash Surrender Value)	29,350.00	27,950
TOTAL CURRENT	$1,520,226.62	$2,509,421
RAILROAD EQUIPMENT	330,518.34	269,882
OTHER ASSETS	153,184.76	138,695
INVESTMENTS	653,347.39	642,722
PERMANENT	1,035,879.57	1,055,228
DEFERRED	132,245.79	143,778
	$3,825,402.47	$4,759,728
LIABILITIES		
CURRENT		
Notes Payable	$1,033,340.89	$ 644,974
Accounts Payable	14,058.69	699,848
Accrued Accounts	38,384.86	85,061
TOTAL CURRENT (FWD.)	$1,085,784.44	$1,429,883

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TOLEDO
DETROIT

CLEVELAND

HANNA BUILDING

ATLANTA
DALLAS
FORT WORTH
HOUSTON

March 10th, 1922.

Board of Directors and Stockholders,
The Struthers Furnace Company,
Cleveland.

Gentlemen:-

We have audited the books of account and record of THE STRUTHERS FURNACE COMPANY - CLEVELAND, for the year ended December 31st, 1921, and submit herewith our report.

Below is set forth a condensed statement of the Assets and Liabilities of the Company at the close of business December 31st, 1921. shown in greater detail in the accompanying Balance Sheet, comparison also being made with the corresponding items as of the close of business December 31st, 1920:

	DEC.31-1921	DEC.31-1920	INCREASE DECREASE
ASSETS			
CURRENT			
Cash	$ 2,939.20	$ 14,982.30	$ 12,043.10
U. S. Government Securities	49,096.97	68,796.28	19,699.31
Notes Receivable	-o-	3,539.47	3,539.47
Accounts Receivable	41,020.48	440,129.86	399,109.38
Inventory	1,397,819.97	1,954,023.52	556,203.55
Life Insurance (Cash Surrender Value)	29,350.00	27,950.00	1,400.00
TOTAL CURRENT	$1,520,226.62	$2,509,421.43	$989,194.81
RAILROAD EQUIPMENT	330,318.34	269,882.69	60,635.65
OTHER ASSETS	153,184.76	138,695.68	14,489.08
INVESTMENTS	653,347.39	642,722.10	10,625.29
PERMANENT	1,035,879.57	1,055,228.31	19,348.74
DEFERRED	132,245.79	143,778.10	11,532.31
	$3,825,402.47	$4,759,728.31	$934,325.84
LIABILITIES			
CURRENT			
Notes Payable	$1,033,340.89	$ 644,974.21	$388,366.68
Accounts Payable	14,058.69	699,848.17	685,789.48
Accrued Accounts	38,384.86	85,061.15	46,676.29
TOTAL CURRENT (FWD.)	$1,085,784.44	$1,429,883.53	$344,099.09

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Figures underscored in Black should be Green

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Figures

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Figures

Our certificate or report upon any audit or investigation to be furnished by us or with the distinct understanding that any such certificate, publication, or copy therefrom, in full or in part, of such certificate or report, shall be in the form to be approved by us.
As a preventive against fraud, attention is directed to the fact that all pages of this report should bear our initial mark.

	DEC.31-1921	DEC.31-1920	INCREASE DECREASE
(FORWARD).....	$1,085,784.44	$1,429,883.53	$344,099.09
THE STRUTHERS COAL & COKE COMPANY.....	268,680.72	292,723.35	24,042.63
RESERVES.....	138,686.78	197,827.42	59,140.64
NOMINAL			
Capital Stock:			
Preferred-7% Cumulative.....	$1,250,000.00	$1,250,000.00	$ -o-
Common.....	1,000,000.00	1,000,000.00	-o-
Surplus.....	82,250.53	589,294.01	507,043.48
TOTAL NOMINAL.....	$2,332,250.53	$2,839,294.01	$507,043.48
	$3,825,402.47	$4,759,728.31	$934,325.84

The transactions affecting the Company's Surplus Account for the year ended December 31st, 1921, are summarized as follows:

BALANCE December 31st, 1920.....		$589,294.01
CHARGE		
Discount taken during 1920 in error.....		8,258.91
ADJUSTED SURPLUS DECEMBER 31ST, 1920.....		$581,035.10
DEDUCTIONS		
Net Loss for the year.....	$361,096.39	
Decrease in book value of Capital Stock of The Struthers Coal & Coke Company.....	31,765.11	
Additional provision for prior years' Federal Taxes.....	23,517.45	
Dividends Paid - Preferred 7%.....	87,500.00	
	$503,878.95	
Less: Increase in value of Liberty Bonds to market value.....	5,094.38	
NET DEDUCTIONS.....		498,784.57
BALANCE DECEMBER 31ST, 1921.....		$ 82,250.53

A comparison of the Company's operating results for the years ended December 31st, 1921 and December 31st, 1920, is set forth in the following condensed statement:

	YEAR ENDED DEC.31-1921	YEAR ENDED DEC.31-1920	INCREASE DECREASE
Sales.....	$817,543.54	$4,225,395.43	$3,407,851.89
Less: Discounts and other Allowances.....	13,472.13	3,644.62	9,827.51
NET SALES (FWD.).....	$804,071.41	$4,221,750.81	$3,417,679.40

	YEAR ENDED DEC.31-1921	YEAR ENDED DEC.31-1920	INCREASE DECREASE
(FORWARD)	$804,071.41	$4,221,750.81	$3,417,679.40
Cost of Sales	755,388.57	3,556,660.40	2,801,271.83
GROSS PROFIT	$ 48,682.84	$ 665,090.41	$ 616,407.57
Selling, General and Administrative Expense	184,949.87	264,373.67	79,423.80
OPERATING PROFIT-LOSS	$136,267.03	$ 400,716.74	$ 536,983.77
Other Deductions - Net	224,829.36	154,810.07	70,019.29
PROFIT-LOSS BEFORE PROVIDING FOR ESTIMATED FEDERAL TAXES AND CONTINGENCIES	$361,096.39	$ 245,906.67	$ 607,003.06
Provision for estimated Federal Taxes and Reserve for Contingencies	-o-	30,000.00	30,000.00
NET PROFIT-LOSS	$361,096.39	$ 215,906.67	$ 577,003.06

Our comments relative to verification of the Assets and Liabilities, as stated in the accompanying Balance Sheet, follow:

We verified the Petty Cash Fund at the Cleveland Office by actual count on January 31st, 1922, and reconcilement with the amount shown by the Company's books as being on hand at December 31st, 1921. No verification of the pay roll fund carried at the plant was made by us. Cash on deposit was verified by direct correspondence with the depository banks and reconcilement of the balances reported with those shown by the books of the Company. All recorded Cash receipts for the period under audit were traced by us directly into the bank deposits and all recorded Cash disbursements for the same period were found to be supported by cancelled bank checks, except such checks as appeared to be outstanding at December 31st, 1921, and further supported by invoices, pay rolls and other data on file.

U. S. Government Securities, consisting of various issues of Liberty Bonds and War Savings Stamps, were fully accounted for by personal inspection of the securities.

Following is a list of Customers' Accounts of record at December 31st, 1921:

NAME	AMOUNT
Baker, B. L.	$ 733.09
Central Steel Company, The	38,514.31
Dover Manufacturing Company, The	5.50
Pittsburgh & Lake Erie Railroad Company	54.00
Standard Slag Company, The	608.85
Ward Nail Company, The	1,100.93
Youngstown Ice Company, The	3.80
TOTAL	$41,020.48

We analyzed the foregoing accounts as to date of charge or subsequent liquidation as shown below:

DATE OF CHARGE AND SUBSEQUENT PAYMENTS	AMOUNT
Payments subsequent to January 1st, 1922 and prior to completion of our examination	$ 608.85
December 1921	38,699.66
November 1921	513.75
October 1921	348.50
May 1st, to September 30th, inclusive	266.63
Prior to May 1st, 1921	583.09
TOTAL	$41,020.48

The inventory value of Ore is stated in this Balance Sheet in the amount of $1,112,196.61 on the basis of 1921 Season Ore Prices, while Pig Iron, other Raw Material and Supplies are valued at the lower of cost or approximate market value as determined by the management. The aggregate value of this inventory has been certified to us by a responsible official of the Company and we have made thorough tests as to mathematical accuracy of computations and method of valuation.

The amount of $29,350.00 represents the Cash surrender value of $15,500.00 of a life insurance policy for $50,000.00 on the life of W. C. Runyon, Sr., together with the Company's equity of $13,850.00 in the Cash surrender value of two similar policies for $25,000.00 each. Under the terms of an agreement, dated November 22nd, 1921, the Company is relieved of paying any further premiums on the last two policies mentioned and relinquishes its rights to any future proceeds of the policies over and above the equity specified.

Railroad Equipment is represented at the depreciated book value of $330,518.34 at December 31st, 1921. We examined all additions to this account during the current year, amounting to $67,555.29, and in our opinion, based upon our inspection of the supporting data on file, the charges so made represent items properly capitalizable. An allowance of $6,919.64 for depreciation has been provided on the Company's books for the year.

We have included under the caption of Other Assets, Personal and Miscellaneous Accounts Receivable, Customers' Long Term Notes Receivable, which were examined by us, the value remaining in the Struthers Savings & Banking Company account, which Company is in process of liquidation, and Deposit on Workmen's Compensation Claim. Exhibit setting forth these items in greater detail is included elsewhere in t is report.

The Company's investment in The Struthers Coal & Coke Company, the entire amount of Capital Stock of which Company is owned by The Struthers Furnace Company, is stated in the accompanying Balance Sheet in the amount of $12,671.89, as reflected by a separate audit made by us of that Company's books as of December 31st, 1921. The one-half interest of $340,675.50 in the Helmer-Wade Ore Mine is stated at cost, as supported by records on file submitted by The Cleveland Cliffs Iron Company.

The depreciated value of Real Estate, Furnace Plant and Equipment, Furniture and Fixtures, etc., as shown by the Company's records at December 31st, 1921, amounted to $1,035,879.57. We examined all additions to these accounts for the year under audit, and, in our opinion, based upon the data examined and other information obtained, such additions have been properly capitalized. Allowance has been provided on the Company's books for the current year for depreciation of Furnace Plant and Equipment, Furniture and Fixtures, etc., by a charge against operations in the amount of $23,440.25.

Classified as Deferred Assets, are the prepaid value of dock storage, taxes, interest, unexpired insurance premiums, etc., and preferred stock underwriters expense, all of which, in our opinion, represent items properly chargeable against the Company's future operations

Full provision has been made under Current Liabilities, aggregating $1,085,784.44, for all ascertained liability of the Company at December 31st, 1921, for notes given for money borrowed and for ore purchased, for unpaid purchases, expenses, pay roll, etc., as well as accrued items, disclosed by the records examined and information obtained by us. We verified the Company's liability for notes payable, as stated, together with open account with The Cleveland Cliffs Iron Company, by direct correspondence.

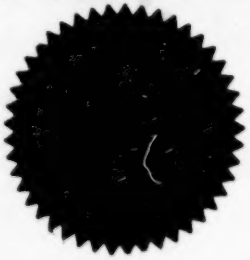
We verified the open account with The Struthers Coal & Coke Company by audit of that Company's books.

Attention is directed to the fact that the accompanying Balance Sheet is subject to any necessary adjustment upon determination of the final liability of the Company for prior years' Federal Taxes.

We verified the outstanding Preferred 7% Cumulative Capital Stock, aggregating $1,250,000.00, by direct correspondence with the Transfer Agent, and the Common Stock, aggregating $1,000,000.00, by trial balance of the stock certificate stubs. Dividends on Preferred Stock have been paid to November 1st, 1921.

Information obtained by us, supported by certification made to us by a responsible official, indicated that the Company was not obligated to any appreciable extent at December 31st, 1921, on any purchase or sales contracts to be liquidated at stipulated prices differing from current market quotations.

WE HEREBY CERTIFY, that we have audited the books of account and record of THE STRUTHERS FURNACE COMPANY - CLEVELAND, as herein outlined, and that, in our opinion, based upon the records examined and information obtained by us and subject to any necessary adjustment upon determination of final liabil ty for prior years' Federal Taxes, the accompanying Balance Sheet is drawn up so as to correctly set forth the financial position of the Company at the close of business December 31st, 1921, and the relative Operating Statement is correct.



Very truly yours,

Ernst & Ernst

Certified Public Accountants

BALANCE

THE STRUTHERS FURNACE COMPANY - CLEVELAND

At the close of business December 31st, 1921.

ASSETS

CURRENT			
CASH			
Office Fund		$ 807.67	
Pay Roll Fund		329.22	
On Deposit		1,802.31	$ 2,939.20
U. S. GOVERNMENT SECURITIES			
Liberty Bonds (Various Issues)	$ 48,800.00		
Less: Allowance to reduce to market value 1,123.01	1,123.01	$ 47,676.99	
Accrued Interest		501.98	$ 48,178.97
War Savings Stamps			918.00
			49,096.97
ACCOUNTS RECEIVABLE			
Customers			41,020.48
INVENTORY			
Ore-On Basis of 1921 Season Ore Prices		$1,112,196.61	
Pig Iron, Other Raw Materials and Supplies-At lower of Cost or approximate Market Value		285,623.36	1,397,819.97
			39,380.00
LIFE INSURANCE (Cash Surrender Value)			$1,530,226.62
RAILROAD EQUIPMENT			
Coke Cars and Locomotive			$ 351,562.58
Less: Allowance for Depreciation			21,044.24
			330,518.34
OTHER ASSETS			
Personal and Miscellaneous Accounts Receivable			$ 149,654.14
Customers' Notes Receivable (Long Term)		$ 2,219.84	
Accrued Interest		64.75	2,284.59
Struthers Savings & Banking Company		$ 1,206.45	
Less: Allowance for possible shrinkage		452.42	754.03
Deposit on Workmen's Compensation Claim			492.00
			153,184.76
INVESTMENTS			
THE STRUTHERS COAL & COKE COMPANY			
Book Value of Stock at December 31st, 1921			312,671.89
UNDIVIDED ONE-HALF INTEREST IN ORE MINE (At Cost)			
Palmer-Wade Mine			340,675.50
			653,347.39
PERMANENT			
Real Estate			$ 208,896.00
Furnace Plant and Equipment	$1,169,134.20		
Furniture and Fixtures	4,281.84		
Automobiles	3,719.75	$1,177,135.79	
Less: Allowance for Depreciation		358,627.17	818,508.62
			$1,027,404.62
Cement Plant, Machinery and Equipment			8,474.95 1,035,879.57
DEFERRED			
Prepaid Dock Storage, Taxes, Interest, Unexpired Insurance Premiums, etc.			$ 32,245.79
Preferred Stock Underwriting Expense			100,000.00 132,245.79
			$3,828,402.47

LIABILITIES

CURRENT			
NOTES PAYABLE			
For Money Borrowed-From Banks		$ 700,000.00	
For Ore Purchased		333,340.89	$1,033,340.89
ACCOUNTS PAYABLE			
For Purchases, Expenses, etc.		$ 9,552.41	
The Cleveland Cliffs Iron Co., For proportionate cost of operating Palmer-Wade Mine		3,283.37	
Unpaid Pay Roll		809.40	
Unclaimed Wages		96.60	
Miscellaneous		317.91	14,058.69
ACCRUED ACCOUNTS			
Taxes-Real and Personal			38,384.86 $1,085,784.44
THE STRUTHERS COAL & COKE COMPANY			
Open Account-December 31st, 1921			268,680.72
RESERVES			
Workmen's Liability Insurance			196.71
For Contingencies			138,490.07 138,686.78
CAPITAL			
CAPITAL STOCK			
PREFERRED-7% CUMULATIVE			
Authorized and Issued		$1,250,000.00	
COMMON			
Authorized and Issued		1,000,000.00	$2,250,000.00
SURPLUS			
Balance December 31st, 1921			82,250.53 2,332,250.53

(Note A) The Company was reported to us as being contingently liable at December 31st, 1921, in the amount of $75,000.00 for Trade Acceptances discounted.

(Note B) This Balance Sheet is subject to adjustment, if any, upon final review by the Government of prior years' Federal Tax Returns.

(Note C) This Balance Sheet is subject to the comments contained in our "Certificate", included in and made a part of this report.

$3,828,402.47

INCOME & EXPENSE

THE STRUTHERS FURNACE COMPANY - CLEVELAND

For the year ended December 31st, 1921.

INCOME			
SALES			
Furnace Product		$ 817,543.54	
LESS:			
Returns and Allowances	$ 12,506.01		
Freight Out	966.12	13,472.13	
NET SALES			$ 804,071.41
COST OF SALES			
ORE MINE OPERATIONS			
Inventory January 1st, 1921	$ 55,487.00		
Labor	46,532.94		
Mine Supplies and Expense	22,507.31		
Accounting Expense	12,172.62		
Taxes (Estimated)	7,500.00		
Depreciation	6,446.95		
Adjustment of Supplies Inventory	5,066.80		
Maintenance and Repairs	4,031.87		
Loss on House Rentals-Net	1,567.89		
Miscellaneous	279.81	$ 371,593.19	
LESS:			
Inventory December 31st, 1921	$ 346,419.20		
Excess amount of Ore received during 1920 returned in 1921	15,715.57		
Adjustment of Ore Inventory	9,205.67		
Profit on Sale of Equipment	185.15		
Miscellaneous Income	67.60	371,593.19	$ -0-
FURNACE OPERATIONS			
Inventory of Pig Iron January 1st, 1921	$ 582,335.01		
Ore charged to Furnace	146,217.51		
Coke charged to Furnace	94,057.10		
Repairs, Relining Furnace, etc.	57,860.05		
Labor	39,530.59		
Limestone	11,669.09		
Supplies (Less: Discount Earned)	4,432.98		
Demurrage, Switching and Extra Handling of Pig Iron	2,443.20		
Coal	2,022.01		
Miscellaneous	1,715.71	$ 942,283.25	
LESS:			
Inventory of Pig Iron December 31st, 1921	150,646.01		
Adjustment of Pig Iron Inventory	34,751.88		
Sale of Electric Current	1,496.79	186,894.68	755,388.57
			755,388.57
GROSS PROFIT (FWD.)			$ 48,682.84

GROSS PROFIT (FWD.)			$ 48,682.84
EXPENSE			
SELLING, GENERAL AND ADMINISTRATIVE			
Administrative Salaries	$ 72,250.00		
Taxes	44,065.85		
Office Salaries	16,517.60		
Commission	13,904.02		
Insurance	10,167.49		
Legal and Professional	8,746.92		
Office Rent, Supplies and Expense	5,960.92		
Telephone and Telegraph	1,643.98		
Advertising	2,381.00		
Traveling and Entertaining	3,609.27		
Assessments, Dues and Subscriptions	2,232.30		
Postage and Revenue Stamps	956.54		
Registrar and Transfer Fees	911.75		
Directors' Fees	520.00		
Miscellaneous	82.23	184,949.87	
OPERATING LOSS			$ 136,267.03
OTHER DEDUCTIONS			
Interest - Net	$ 87,412.17		
Depreciation	30,389.89		
Adjustment of pricing of Inventory at December 31st, 1921 to lower of Cost or Market Value	82,265.85		
Idle Expense-Helmer-Wade Mine	27,087.36		
Exploratory Expense	3,826.13		
Loss on Sale of Coke	2,557.12		
Donations	1,741.70		
Life Insurance Premium	1,094.09	$ 236,344.33	
OTHER INCOME			
Rent of Buildings	7,789.41		
Railroad Equipment Revenue	1,534.35		
Miscellaneous	1,042.16		
Premium on handling Slag	589.04		
Profit on exchange of Ore	560.01	11,514.97	
OTHER DEDUCTIONS-NET			224,829.36
LOSS FOR PERIOD			$ 361,096.39

SURPLUS

THE STRUTHERS FURNACE COMPANY - CLEVELAND

December 31st, 1921.

SURPLUS December 31st, 1920 - as shown by Audit Report		$ 569,294.01
CHARGE		
Discount on Limestone purchased during 1920 taken in error		8,258.91
ADJUSTED SURPLUS DECEMBER 31ST, 1920		$ 561,035.10
DEDUCTIONS		
Net Loss from operations for the year ended December 31st, 1921 - as shown by Statement of Income & Expense	$ 361,096.39	
Additional provision for Federal Taxes for prior period, subject to adjustment upon determination of final liability therefor	23,517.45	
Decrease in book value of Capital Stock of The Struthers Coal & Coke Company at December 31st, 1921 - as shown by Audit Report of that Company	31,765.11	
Preferred Stock Dividend-7%	87,500.00	
	$ 503,878.95	
ADDITION		
Increase in value of Liberty Bonds to market value	5,094.38	498,784.57
SURPLUS DECEMBER 31ST, 1921, AS SHOWN BY THIS REPORT		$ 62,250.53

INVENTORY

THE STRUTHERS FURNACE COMPANY - CLEVELAND

December 31st, 1921.

ORE			
On Hand at Furnace		$ 596,297.10	
At Dock:			
Helmer-Wade	$ 260,788.12		
Struthers and Cambridge	169,480.31	430,268.43	
At Mine		85,631.08	$1,112,196.61
OTHER RAW MATERIALS			
ON HAND			
Pot Scrap	$ 13,254.94		
Limestone	7,270.25		
Dolomite	7,231.46		
Coal	7,080.00		
Cinder	5,736.78		
Coke	5,179.97		
Borings	3,863.87		
Copper Scrap	1,674.84		
Sinter	1,402.18		
Sand	691.50		
Loam	45.50		
Slag	18.00	$ 53,449.29	
FINISHED MATERIAL			
Pig Iron		150,646.01	
SUPPLIES			
Furnace Department	$ 80,733.09		
Cement Department	794.97	81,528.06	285,623.3
		TOTAL	$1,397,819.9

OTHER ASSETS

THE STRUTHERS FURNACE COMPANY - CLEVELAND

December 31st, 1921.

PERSONAL AND MISCELLANEOUS ACCOUNTS RECEIVABLE		
Demer, R. H.	$ 447.59	
Grossman, A.	471.93	
Runyon, R. E.	634.81	
Runyon, W. C., Jr.	4,976.15	
Runyon, W. C., Sr.	142,512.73	
Sowers, J. M. - Insurance Claim	447.85	
U. S. Government - Penalty Claim	163.08	$ 149,654.14
NOTES RECEIVABLE - LONG TERM		
Customers	$ 2,219.84	
Accrued Interest	64.75	2,284.59
STRUTHERS SAVINGS & BANKING COMPANY		
Bank Account - Liquidating	$ 1,206.45	
Less: Allowance for possible shrinkage	452.42	754.03
DEPOSIT		
Workmen's Compensation Claims		492.00
	TOTAL	$ 153,184.76

PLANT AND EQUIPMENT

THE STRUTHERS FURNACE COMPANY - CLEVELAND

December 31st, 1921.

	FURNACE DEPARTMENT	CEMENT DEPARTMENT	FURNITURE AND FIXTURES	AUTOMOBILES	TOTAL
alance Decem- ber 31st, 1920	$1,165,042.69	$ 8,474.95	$ 4,281.84	$ 3,719.75	$1,181,519.23
dditions	4,091.51	-o-	-o-	-o-	4,091.51
	$1,169,134.20	$ 8,474.95	$ 4,281.84	$ 3,719.75	$1,185,610.74

llowance for Depreciation:		
Balance December 31st, 1920	$335,186.92	
Provision during current year	23,440.25	358,627.17
BALANCE DECEMBER 31ST, 1921		$ 826,983.57

ADDITIONS

	LABOR	MATERIALS AND OUTSIDE CONSTRUCTION	ALLOWANCE FOR DEPRECIATION
onstruction	$ -o-	$ -o-	$ 20,413.60
asoline Station	-o-	76.66	4.58
avatory	-o-	319.01	210.03
ew Water Mains	-o-	-o-	87.78
re Thawing Plant	-o-	480.54	262.77
lag Plant	-o-	-o-	2,269.43
ose House	-o-	-o-	2.13
ew Generator	-o-	2,102.32	24.53
tore Room Additions	269.70	571.77	5.36
aboratory Equipment	-o-	271.51	-o-
TOTAL FURNACE DEPARTMENT		$ 4,091.51	$ 23,280.21
URNITURE AND FIXTURES		-o-	85.64
UTOMOBILES		-o-	74.40
		$ 4,091.51	$ 23,440.25

DEFERRED

THE STRUTHERS FURNACE COMPANY - CLEVELAND

December 31st, 1921.

Dock Storage	$ 13,792.88	
Interest on Notes Payable	8,484.18	
Unexpired Insurance Premiums	6,550.86	
Corporate Taxes	2,297.50	
Prepaid Subscriptions, etc.	694.75	
Unexpired Life Insurance Premiums	425.62	$ 32,245.79
Preferred Stock-Underwriters' Expense		100,000.00
	TOTAL	$ 132,245.79

NOTES PAYABLE

THE STRUTHERS FURNACE COMPANY - CLEVELAND

December 31st, 1921.

DATE	DUE DATE	AMOUNT
FOR MONEY BORROWED		
UNION TRUST COMPANY - CLEVELAND		
Oct. 3-1921	Jan. 3-1922	$ 50,000.00
Oct. 4-1921	Jan. 3-1922	50,000.00
Oct. 17-1921	Jan. 16-1922	100,000.00
Nov. 15-1921	Feb. 14-1922	50,000.00
Nov. 21-1921	Feb. 20-1922	50,000.00
Nov. 21-1921	Feb. 20-1922	75,000.00
Dec. 12-1921	Mar. 13-1922	50,000.00
Dec. 19-1921	Mar. 20-1922	100,000.00
Dec. 21-1921	Mar. 21-1922	75,000.00
Dec. 27-1921	Mar. 27-1922	100,000.00
		$ 700,000.00
FOR PURCHASE OR ORE		
CLEVELAND CLIFFS IRON COMPANY - CLEVELAND		
Oct. 3-1921	Jan. 3-1922	$ 184,151.71
Oct. 24-1921	Jan. 24-1922	54,594.59
Oct. 24-1921	Jan. 24-1922	54,594.59
Dec. 19-1921	Mar. 20-1922	40,000.00 — 333,340.89
	TOTAL	$1,033,340.89

SUMMARY OF MATURITIES

January	1922	$ 493,340.89
February	1922	175,000.00
March	1922	365,000.00
	TOTAL	$1,033,340.89

CABLE ADDRESS "ERNSTAUDIT" NEW YORK

NEW YORK
PHILADELPHIA
BOSTON
PROVIDENCE
WASHINGTON
RICHMOND
BUFFALO
PITTSBURGH
CLEVELAND
CINCINNATI
TOLEDO
DETROIT

ERNST & ERNST

AUDITS AND SYSTEMS
TAX SERVICE

CLEVELAND
HANNA BUILDING

CHICAGO
MINNEAPOLIS
ST. PAUL
INDIANAPOLIS
DENVER
ST. LOUIS
KANSAS CITY
NEW ORLEANS
ATLANTA
DALLAS
FT. WORTH
HOUSTON

FILE COPY
PLEASE RETURN TO
STATISTICAL DEPARTMENT

129

Defendant's Exhibit No. 16

6 6 6

Cleveland, April 24th, 1922.

Mr. W. C. Runyon,
Pres., The Struthers Furnace Company,
Cleveland.

Dear Sir:-

In accordance with request we have compiled from our Audit Reports previously rendered for THE STRUTHERS FURNACE COMPANY, CLEVELAND, covering the period from May 1st, 1916 to December 31st, 1921, inclusive, and submit herewith Summary of Earnings, Interest and Federal Taxes, together with brief statement of transactions affecting the Company's Surplus Account for the period named.

SUMMARY OF EARNINGS

PERIOD	PROFIT-LOSS EXCLUSIVE OF INTEREST AND FEDERAL TAXES	INTEREST	ESTIMATED FEDERAL TAXES AND CONTINGENCIES	NET PROFIT-LOSS
Year ended April 30-1917..	$ 285,597.59	$ 43,718.27	$ 34,559.55	$207,319.77
Eight months ended Dec.31-1917.	548,205.26	18,460.76	212,313.00	317,431.50
Year ended:				
Dec. 31-1918...	1,105,545.69	9,499.46	800,000.00	296,046.23
Dec. 31-1919...	141,128.07	29,730.45	15,000.00	96,397.62
Dec. 31-1920...	272,004.40	34,356.64	30,000.00	207,647.76
Dec. 31-1921...	268,589.84	87,412.17	-o-	355,002.01
TOTAL FOR PERIOD.	$2,083,891.17	$223,177.75	$1,091,872.55	1,768,840.87
YEARLY AVERAGE...	$ 367,529.30			$135,500.03

SURPLUS ACCOUNT

SURPLUS May 1st, 1916, adjusted to include subsequent miscellaneous charges applicable prior			$ 239,285.19
Add:			
Net Profit for the period from May 1st, 1916 to December 31st, 1921, as shown by above summary	$ 768,840.87		
Net Adjustment of Book Value of Capital Stock of The Struthers Coal & Coke Company	206,409.16	975,250.03	
			$1,214,535.22
Less: Loss on obsolete Cement Department Equipment	$ 75,000.00		
Dividends paid during period:			
Cash	$807,284.69		
Stock	250,000.00	1,057,284.69	1,132,284.69
SURPLUS DECEMBER 31ST, 1921			$ 82,250.53

WE HEREBY CERTIFY, that we have audited the books of account and record of THE STRUTHERS FURNACE COMPANY - CLEVELAND, for the period from May 1st, 1916 to December 31st, 1921, inclusive, and that, in our opinion, based upon the records examined and information obtained by us

Pres., The Struthers Furnace Company,
Cleveland.

Defendant's Exhibit No. 6

Dear Sir:-

In accordance with request we have compiled from our Audit Reports previously rendered for THE STRUTHERS FURNACE COMPANY, CLEVELAND, covering the period from May 1st, 1916 to December 31st, 1921, inclusive, and submit herewith Summary of Earnings, Interest and Federal Taxes, together with brief statement of transactions affecting the Company's Surplus Account for the period named.

SUMMARY OF EARNINGS

PERIOD	PROFIT-LOSS EXCLUSIVE OF INTEREST AND FEDERAL TAXES	INTEREST	ESTIMATED FEDERAL TAXES AND CONTINGENCIES	NET PROFIT-LOSS
Year ended April 30-1917..	$ 285,597.59	$ 43,718.27	$ 34,559.55	$207,319.77
Eight months ended Dec.31-1917.	548,205.26	18,460.76	212,313.00	317,431.50
Year ended:				
Dec. 31-1918...	1,105,545.69	9,499.46	800,000.00	296,046.23
Dec. 31-1919...	141,128.07	29,730.45	15,000.00	96,397.62
Dec. 31-1920...	272,004.40	34,356.64	30,000.00	207,647.76
Dec. 31-1921...	268,589.84	87,412.17	-o-	355,002.01
TOTAL FOR PERIOD.	$2,083,891.17	$223,177.75	$1,091,872.55	768,840.87
YEARLY AVERAGE...	$ 367,529.30			$135,592.03

SURPLUS ACCOUNT

SURPLUS May 1st, 1916, adjusted to include subsequent miscellaneous charges applicable prior		$ 239,285.19
Add:		
Net Profit for the period from May 1st, 1916 to December 31st, 1921, as shown by above summary	$ 768,840.87	
Net Adjustment of Book Value of Capital Stock of The Struthers Coal & Coke Company	206,409.16	975,250.03
		$1,214,535.22
Less: Loss on obsolete Cement Department Equipment	$ 75,000.00	
Dividends paid during period:		
Cash	$807,284.69	
Stock	250,000.00	1,057,284.69	1,132,284.69
SURPLUS DECEMBER 31ST, 1921...		$ 82,250.53

WE HEREBY CERTIFY, that we have audited the books of account and record of THE STRUTHERS FURNACE COMPANY - CLEVELAND, for the period from May 1st, 1916 to December 31st, 1921, inclusive, and that, in our opinion, based upon the records examined and information obtained by us and subject to any necessary adjustment upon determination of the Company's final liability for Federal Taxes, the foregoing Summary correctly sets forth the Net Profit of the Company for the period named.

Very truly yours,

Certified Public Accountants

The Witness: I recall the conversation with Mr. Zwetsch, Vice President of A. B. Leach & Company, Inc., in January, 1922, with reference to the company's first dividend period. I asked them to loan us the money to pay it with. I told them if they did not do it we could not pay it. I think he said he would take the matter up and let me hear from him. Later on, he told us they would lend the money and for us to make our notes. I addressed him a letter on the 26th of January, 1922, with respect to that matter. The document you hand me is a copy of that letter.

Thereupon, the document above mentioned was marked Plaintiff's Exhibit 8 and received in evidence, said exhibit being as follows:

PLAINTIFF'S EXHIBIT NO. 8.

Letter, Dated Jan. 26, 1922, Struthers to Leach.

January 26th, 1922.

Mr. H. C. Zwetsch, Vice President,
A. B. Leach & Company,
Guardian Bldg.,
City.

Dear Sir:

We desire to confirm our conversation with you today as follows:

In consideration of your advancing to us the sum of $21,875.00, we have agreed that we will pay the regular dividend of one and three-quarters (1¾%) percent on the preferred stock outstanding of this Company on February 1st, 1922, which dividend is in like amount.

We hand you herewith three notes in the sum of $5000.00 each and one note in the sum of $6,875.00. All of these notes mature in four months and bear interest at the rate of 6% per annum.

It is also agreed that should we so desire, we will have the privilege of renewing these notes for a further period of sixty days at the going rate of interest at that time.

Will you kindly acknowledge receipt of this letter.

Trusting that all of the above is in accordance with your understanding of the matter, we are,

Very truly yours,

THE STRUTHERS FURNACE COMPANY,
President.

(Enclosures)

The Court: Were those notes paid, do you know, Mr. Runyon?

The Witness: Yes, sir.

The Court: Was that paid out of the bond issue money, do you know?

The Witness: Probably, Your Honor. One can't be sure about those things. We didn't segregate any money.

RE-CROSS EXAMINATION by Mr. Day.

I have in my possession the original of the copy of a letter marked Defendant's Exhibit F, which you show me. That relates to an appraisal of two mines owned by my company. Brassert made the appraisal. He valued the Wade-Helmer Mine at $1,420,000.00. Exclusive of stockpiles and inventories $710,000.00 at 50% interest.

Thereupon, the Defendant's Exhibit F was received in evidence, said exhibit being as follows:

DEFENDANT'S EXHIBIT NO. F.

Letter, Dated Mar. 30, 1922, Brassert to Runyon.

H. A. BRASSERT.

March 30, 1922.

Mr. W. C. Runyon, President.
The Struthers Furnace Co.
Cleveland, Ohio.

Dear Sir:—

I have examined the records and maps of the Wade-Helmer ore mine on the Mesaba Range, owned jointly by your Company and the Cleveland-Cliffs Iron Company.

I value this property at $1,420,000 exclusive of stock piles and inventories, or $710,000 for your 50% interest.

Very truly yours

H. A. BRASSERT.

HAB-L

Interest on the bonds was paid up to and including May, 1924. The last dividend on the preferred stock was paid in August, 1922. Dividends on the preferred stock were payable quarterly.

Mr. Wilson: In connection with Mr. Runyon's testimony, we offer in evidence copy of letter admitted to be genuine and to have been received, dated April 15, 1922, addressed to A. B. Leach & Company from the Struthers Furnace Company, purporting to send on the duplicate contract.

The document last above mentioned was marked Plaintiff's Exhibit 9 and was received in evidence, said document being as follows:

PLAINTIFF'S EXHIBIT NO. 9.

Letter, Dated April 15, 1922, Runyon to Leach.

April 15th, 1922.

A. B. Leach & Company,
Guardian Bldg.,
City.

Gentlemen:

Herewith we hand you Contract in duplicate covering your option to purchase from us $1,500,000 par amount of bonds. These contracts have been properly executed.

We also hand you herewith certified copies in duplicate of an Extract from the minutes of a meeting of the Board of Directors of this Company, authorizing this contract.

We have already handed to your Mr. Landt in New York, certified copies of our appraisals. We also handed to Mr. Landt, certified copy of our Earnings Statement in support of the figures given in Exhibit "A." We understand that you desire detailed information supporting this Earnings Statement. We will have this ready for you the forepart of the week. We believe that this will give you all of the information called for by the contract. However, if there is any further information which you desire, we will be very glad to furnish it to you as promptly as possible.

The aforesaid mentioned papers are handed to you with the understanding that we shall receive from you the Consent and Proxy covering the preferred stock which stands in your name.

Yours very truly

(Enclosures) *Vice President.*

Mr. Wilson: Mr. Runyon desires, Your Honor, to correct his testimony about the payment of the dividend. The dividend was passed in August and was not paid.

The Court: Come forward, Mr. Runyon. What is your statement now as to the dividends on preferred stock?

The Witness: The May dividend was paid and the dividend was passed, the first time we passed the dividend was August, 1922.

The Court: Then no dividends were paid except the May dividends after you had entered into the contract about this mortgage and bonds?

The Witness: I believe so.

The Court: That is you recollection?

The Witness: Yes, sir.

The Court: Your testimony may stand corrected in that respect.

Mr. Wilson: We offer in evidence a letter dated May 2, 1922, addressed to the Struthers Furnace Company, signed by A. B. Leach and Company incorporated, as Plaintiff's Exhibit 10.

Mr. Day: We object to this as immaterial.

The Court: Well, it may be received; if it relates to some other transaction or property, of course it is not material. Objection overruled and exception allowed.

The paper last above referred to marked Plaintiff's Exhibit 10, was thereupon received in evidence, said exhibit being as follows:

PLAINTIFF'S EXHIBIT NO. 10.

Letter, Dated May 2, 1922, Leach to Struthers.

A. B. LEACH & Co., INC.

105 South LaSalle Street,
Chicago, May 2, 1922.

Struthers Furnace Co.,
Citizens Bldg.,
Cleveland, Ohio.
Mr. W. C. Runyon, Jr., Vice President.

Dear Sir:

We acknowledge receipt of your favor of May 1st enclosing certified copy of appraisal of your company's real estate at Struthers, Ohio. We also are pleased to

advise you that Mr. Brassert has agreed to furnish us with an appraisal of $1,856,170 covering land, buildings and permanent improvements, this having been arrived at after consultation with our attorneys as to what might be included under the Illinois law.

We appreciate very much your cooperation.

Yours truly,

A. B. LEACH & CO., INC.

(Signed) By M. W. HANFORD.

Thereupon, a letter dated May 23 from A. B. Leach & Company to Struthers Furnace Company was marked Plaintiff's Exhibit 11 and received in evidence, said exhibit being as follows:

PLAINTIFF'S EXHIBIT NO. 11.

Letter, Dated May 23, 1922, Leach to Struthers.

A. B. LEACH & CO., INC.

Guardian Trust Bldg.,
Cleveland, Ohio,
May 23, 1922.

The Struthers Furnace Co.,
Citizens Building,
Cleveland, Ohio.

Gentlemen:

Referring to contract giving us the option to purchase $1,500,000 par amount of your Company's First Mortgage Sinking Fund Eight Per Cent Gold Bonds at 90½ plus accrued, payable in cash and preferred stock of your Company as provided in said contract and as set forth in your letter of this date to The Guardian Savings and Trust Company, whereby elect to purchase the whole of said issue of bonds at the price and upon the terms hereinabove stated and as referred to in such letter, and will take and pay for all of said bonds within one hundred and twenty-five (125) days from the date hereof.

Very truly yours,

A. B. LEACH & CO., INC.

(Signed) H. C. ZINTSCH,

Vice President.

HCZ-LEL

ROY H. DOMER, a witness called by the plaintiff, was duly sworn and testified as follows on DIRECT EXAMINATION by Mr. Henderson:

My name is Roy H. Domer. I live at Youngstown, Ohio, and am auditor for the receiver of The Struthers Furnace Company. I have been auditor for the receiver since the time of his appointment in January, 1925. Prior to that time, I was similarly employed by The Struthers Furnace Company in Cleveland and New York City. The company maintained offices in New York from about June 1, 1922, until the appointment of the receiver on January 19, 1925. During the years 1920, 1921, 1922, 1923 and 1924, I supervised the Accounting Department, and either kept myself or supervised the keeping of all books. I am familiar with the contents of the audit report marked Defendant's Exhibit C and purporting to be the audit of Ernst and Ernst of the Struthers Furnace Company dated December 31, 1921. I could not say that the report is correct without checking it in detail, but it looks to me like a copy of the original. I think I have the original with me. There is no question in my mind about the correctness of the copy. The original of which the document you show me is a copy was a correct audit report of the financial condition of the Struthers Furnace Company on December 31, 1921, as shown by the books of the company on that day. As shown by the audit report, the undivided profits or surplus profits of the company on December 31, 1921, were $82,250.53.

Q. Can you tell the Court from any books or records that you have with you as to what the operation of the company was from December 31, 1921, up until the 1st or 5th of May of 1922, so far as there being a profit or loss was concerned, and also as to the condition of the undivided profits or surplus profits as of May 1, 1922? A. Yes, sir.

Q. Will you get whatever data is necessary for you to enlighten the Court on that and tell us?

Mr. Day: I think, Your Honor, we can say this was furnished Leach and Company at their request.

The Court: This audit, you admit was furnished?

Mr. Day: Yes, we admit, the audit.

A. As I said before, the undivided profits of January 1st, was $82,250.53. We do not close the books only

once a year, and from our operating statements, cost sheets we know whether or not we have made money or lost money in any one month. During the month of January 1922, our loss was $15,401.91; February we will show had an operating loss of $16,320.93; in March, $22,-071.80; April, $22,528.85. These losses together with the preferred stock dividend paid February 1, 1922, amounting to $21,875.00, deducted from the previous undivided profits, leaves a deficit as of May 1st, of $15,-947.96, before paying the preferred dividend May 1st. After paying the May 1st dividend of $21,875.00, the undivided profits showed a deficit of $37,822.96.

Q. Can you tell us either from your record of your company or any other information that you have as to records, how the money necessary to pay the dividends on the preferred stock which was paid on February 1st, as well as the money necessary to pay the dividends which was paid on May 1st, both of 1922, was raised by the Company? A. The $21,875.00 necessary for the February 1, 1922, dividends was obtained by loan from A. B. Leach and Company on January 26, 1922. I have the notes which we gave them for the loan.

The Court: When were the notes paid back?

The Witness: The notes were paid May 26, 1922. The May 1st dividend, while we did not segregate any money received for certain purposes, yet we were borrowers, and on April 28, 1922, we borrowed $25,000.00 from the First National Bank at Pittsburgh, and on the same date paid to the Union Trust Company, Cleveland, Ohio, as agents, or as transfer agents, $21,875.00 for preferred stock dividends.

The Court: Did they make the distribution?

The Witness: They made the distribution.

Q. In answer to the Court's question, did I understand you to say it was on the 26th of May that the money borrowed from Leach and Company to pay the February dividend was paid back to Leach and Company?

The Court: That is what he did say to me.

A. May 24th. The notes were due May 26th. However, they were taken up May 24th.

Q. Can you tell us when it was that the Struthers Furnace Company, or about when it was that the Struthers Furnace Company first received any proceeds from

the sale of these bonds to A. B. Leach and Company, either from the Guardian Savings and Trust Company— A. May 24, 1922, from the Guardian Savings and Trust Company.

Q. Now, so far as current assets were concerned— that is, I mean by current assets merchandise in stock or money in bank or bills receivable—what is known as liquid assets—I will ask you to state whether or not those current assets were increased to any extent at all or any degree from December 31, 1921, until the 1st of May, 1922? That is, I mean the net current assets after all the indebtedness of the company had been deducted. A. Oh, yes, I think it was. I couldn't tell you how much, but I would say it was increased in that period.

Q. What? A. I would say that the net current assets were increased.

Q. In what way? A. By the money received from the bonds, sale of bonds.

Q. I am speaking up until the 1st of May. A. Oh, the 1st of May.

The Court: He is speaking between January 1st up until May 1st, whether there had been any increase.

The Witness: No.

The Court: Was there any substantial change in the net quick assets of the company from the statement of December 31, 1921, up until May 1st, and if so, in what direction was the change?

The Witness: It would be a reduction of the net current assets up to that time.

Q. Would you say the reduction would be at least to the extent of the losses to which you have testified and the amount required to pay dividends might total,— would the net quick assets be reduced by that amount, would you say? Or what is the fact? A. Yes, they would.

The Court: Was the last dividend paid on preferred stock May 1, 1922?

The Witness: May 1, 1922.

Q. Have there been any dividends on preferred stock paid since May 1, 1922? A. No, sir.

Q. So that we may be absolutely clear on the other question: When was the last installment of interest paid to the bondholders? A. May 1, 1924.

Q. Showing you this paper marked Plaintiff's Exhibit 12, I will ask you to state whether or not this letter was contained in the files of the Struthers Furnace Company, and has been in your custody since the appointment of a receiver and up until the present time? A. Yes, sir, it was.

Q. Do you know from whom the Struthers Furnace Company received that circular letter? A. I presume it was furnished to our Cleveland office.

Mr. Johnston: I object if the witness doesn't know.

The Court: If he doesn't know, identify it some other way. He found it among the files. That may be competent. I presume you have no direct recollection when you first saw it?

The Witness: No.

Mr. Wilson: Mr. Johnston, you say you are not advised as to whether or not this stock certificate for three thousand shares was deposited with this Court and our tender made. Do you admit the tender back and its refusal?

Mr. Johnston: Yes.

The Court: What date was the tender back made by the receiver to A. B. Leach and Company of the certificates of preferred stock?

Mr. Johnston: I think, if the Court please, the certificate ought to be put in evidence or photostatic copy.

Mr. Wilson: We have a photostatic copy.

Mr. Johnston: That's all right with us.

The Court: I am asking you to state in the stipulation when the tender of the stock was made back, and I assume counsel can agree upon that date easier than it could be gotten from the witness.

Mr. Johnston: I don't recall, Your Honor. It was sometime just prior to the filing of the suit. I can't give you the exact date.

Mr. Wilson: July 20, 1925, I think.

The Court: And whatever it is, your claim is, Mr. Henderson, is it, that after the refusal and co-incidental with the filing of this suit, you deposited that certificate for three thousand shares with the clerk?

Mr. Henderson: Yes.

The Court: Now you are proposing to put in a photostatic copy of that certificate. I will inspect the original if it is here, and photostatic copy may be substituted for the purposes of the record.

Mr. Henderson: I desire to offer in evidence Plaintiff's Exhibit 13-A, being photostatic copy of the face of the preferred stock certificate.

The Court: It is one certificate for how many shares.

Mr. Henderson: For three thousand shares. In that connection will it be conceded that this stock, this three thousand shares were turned in to the Guardian Savings and Trust Company as Trustee, and that new stock was issued by the Struthers Furnace Company to W. C. Runyon as trustee?

Mr. Johnston: Of course it is conceded that Leach and Company turned in three thousand shares of this stock from time to time under this contract to the Union Trust Company, the transfer agent—no, to the Guardian Trust. I find from the records of the transfer agent that what happened was that Leach and Company sent a total of three thousand shares in certificates to the Struthers Furnace Company, and that subsequently the Struthers Furnace Company presented those certificates and had a new certificate issued in the form of the certificate tendered here as Exhibit 13A, said exhibit being as follows:

INC

NUMBER 1307

The Struth

CA

$1,000,000 COMMON

PAR

This is to Certify That ----

is the holder of ... THRE THOUS... sh
transferable in person or by duly authorized attorney u

The holder, by acceptance of this certificate, agrees to all t
and of the Articles of Incorporation of the Company and of the Certi
thereof and Certificate of Increase of capital stock, said certifica
in the office of the Secretary of State of Ohio, December 17th,
reference is hereby made to the same effect as if the provisions th
forth in full; said Articles and Certificates provide in part that th
ferred stock shall be entitled to receive out of surplus profits div
7% per annum, payable quarterly on the first day of February, May
ber in each year, which dividends shall be cumulative from the qu
ment date next preceding the date of the original issue of each shar
dividends shall be paid to the holders of the common stock, and
and upon any voluntary liquidation, dissolution or winding up of t
any voluntary distribution of assets other than by way of dividend
or redemption of preferred stock, to receive $105 per share, or
liquidation, dissolution or winding up, the par value of such stock,
accrued and unpaid dividends thereon before any amount shall be
stock; that the holders of the common stock are entitled to all
assets; that the preferred stock shall not be entitled to any subs
stock hereafter issued by the Company, whether common or pref
or any part of the preferred stock may be called for redemption
Company upon not less than thirty days' prior notice at $105 per
accrued and accumulated dividends thereon; that the Company
beginning January 1, 1922, and during each year beginning Jan
aside out of surplus profits and apply to the redemption and retirem
on or before March 1 of each year, beginning March 1, 1922, an a
the first five year period beginning January 1, 1922, of not less than
year of the second five year period, beginning January 1, 1927,
per cent., and for each year thereafter, beginning January 1, 1932,

IN WITNESS WHEREOF

signed by its duly au

Secretary

Registered
THE GUARDIAN SAVINGS AND TRUST COMPANY,
Registrar
By
Assistant Secretary

INCORPORATED UNDER THE LAWS OF THE
STATE OF OHIO

NUMBER 1307 PREFERRED ---3000--- SHARES

The Struthers Furnace Company

CAPITAL STOCK $2,250,000
DIVIDED INTO
$1,000,000 COMMON STOCK $1,250,000 PREFERRED STOCK
PAR VALUE OF SHARES $100 EACH

This is to Certify That -----W. C. RUNYON, TRUSTEE-----

is the holder of THREE THOUSAND shares of the 7% cumulative Preferred Stock of THE STRUTHERS FURNACE COMPANY, transferable in person or by duly authorized attorney upon the surrender of this certificate properly endorsed.

The holder, by acceptance of this certificate, agrees to all the provisions hereof and of the Articles of Incorporation of the Company and of the Certificate of Amendment thereof and Certificate of Increase of capital stock, said certificates having been filed in the office of the Secretary of State of Ohio, December 17th, 1919, to all of which reference is hereby made to the same effect as if the provisions thereof were herein set forth in full; said Articles and Certificates provide in part that the holders of the preferred stock shall be entitled to receive out of surplus profits dividends at the rate of 7% per annum, payable quarterly on the first day of February, May, August and November in each year, which dividends shall be cumulative from the quarterly dividend payment date next preceding the date of the original issue of each share thereof, before any dividends shall be paid to the holders of the common stock, and no other dividends, and upon any voluntary liquidation, dissolution or winding up of the Company or upon any voluntary distribution of assets other than by way of dividends from surplus profits or redemption of preferred stock, to receive $105 per share, or upon any involuntary liquidation, dissolution or winding up, the par value of such stock, in each case plus all accrued and unpaid dividends thereon before any amount shall be paid to the common stock; that the holders of the common stock are entitled to all other dividends and assets; that the preferred stock shall not be entitled to any subscription rights in any stock hereafter issued by the Company, whether common or preferred; that the whole or any part of the preferred stock may be called for redemption at any time by the Company upon not less than thirty days' prior notice at $105 per share plus all unpaid, accrued and accumulated dividends thereon; that the Company shall, during the year beginning January 1, 1922, and during each year beginning January 1 thereafter, set aside out of surplus profits and apply to the redemption and retirement of preferred stock on or before March 1 of each year, beginning March 1, 1922, an amount in each year of the first five year period beginning January 1, 1922, of not less than ten per cent., for each year of the second five year period, beginning January 1, 1927, not less than fifteen per cent., and for each year thereafter, beginning January 1, 1932, not less than twenty per cent. of the net surplus profits of the Company for the preceding year remaining after the payment of preferred dividends and all taxes, including any state and federal income or excess profits tax, such redemption and retirement to be (1) by purchase in the market at not exceeding the redemption price, or (2) by calls for redemption; that so long as any of the preferred stock remains outstanding the Company shall maintain net quick assets in an amount not less than 100% of the par value of the preferred stock at such time outstanding and shall declare or pay no dividend to the holders of the common stock unless each and all of the accrued quarterly preferred dividends on the preferred stock shall have been paid, or the money to pay the same be set aside for that purpose, and unless all requirements for the redemption or retirement of the preferred stock shall have been complied with, and unless the surplus profits of the Company applicable to dividends on preferred stock for the twelve months preceding shall not have been less than one and one-half times said preferred stock requirements, and unless also the net quick assets of the Company are at such time at least equal to 100% of the outstanding preferred stock and are not reduced below such amount by the payment of such dividend upon common stock; that the preferred stock shall have no voting power except (a) in the event of default in the payment of four consecutive quarterly dividend installments upon the preferred stock and upon and during such default the preferred stock shall have equal voting rights with the common stock, share for share, and (b) no mortgage or other lien other than a purchase money mortgage shall be placed upon the real estate, plant or equipment of the Company, nor shall any bonds, debentures, notes or other similar indebtedness having a maturity beyond one year, be issued or created or guaranteed, nor shall any additional preferred stock, having priority over or parity with this issue of preferred stock, be issued except in each case with the affirmative vote or consent in writing of the holders of three-fourths in amount of the preferred stock of this issue then outstanding.

This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

Countersigned JUL 13 1922 THE STRUTHERS FURNACE COMPANY TRANSFER AGENT
By [signature] ASSISTANT SECRETARY

IN WITNESS WHEREOF, the Company has caused its corporate seal to be hereunto affixed and this certificate to be signed by its duly authorized officers this 13th day of July 1922

[signature] Secretary

[signature] V. President

Youngstown, Ohio. May 13, 1925

For full value received I hereby sell, assign and transfer unto
three thousand shares of the preferred capital Stock represented by the
within Certificate, and do hereby irrevocably appoint
to transfer the said stock on the books of the within named Company with
full power of substitution in the premises. Dated May 13th, 1925,
The Struthers Furnace Co.

WITNESSETH:

Hugh W. Faust
Receiver, The Struthers Furnace Co.

FOR VALUE RECEIVED I hereby sell, assign and transfer unto

The Stanhope Furnace Co.

Three thousand shares

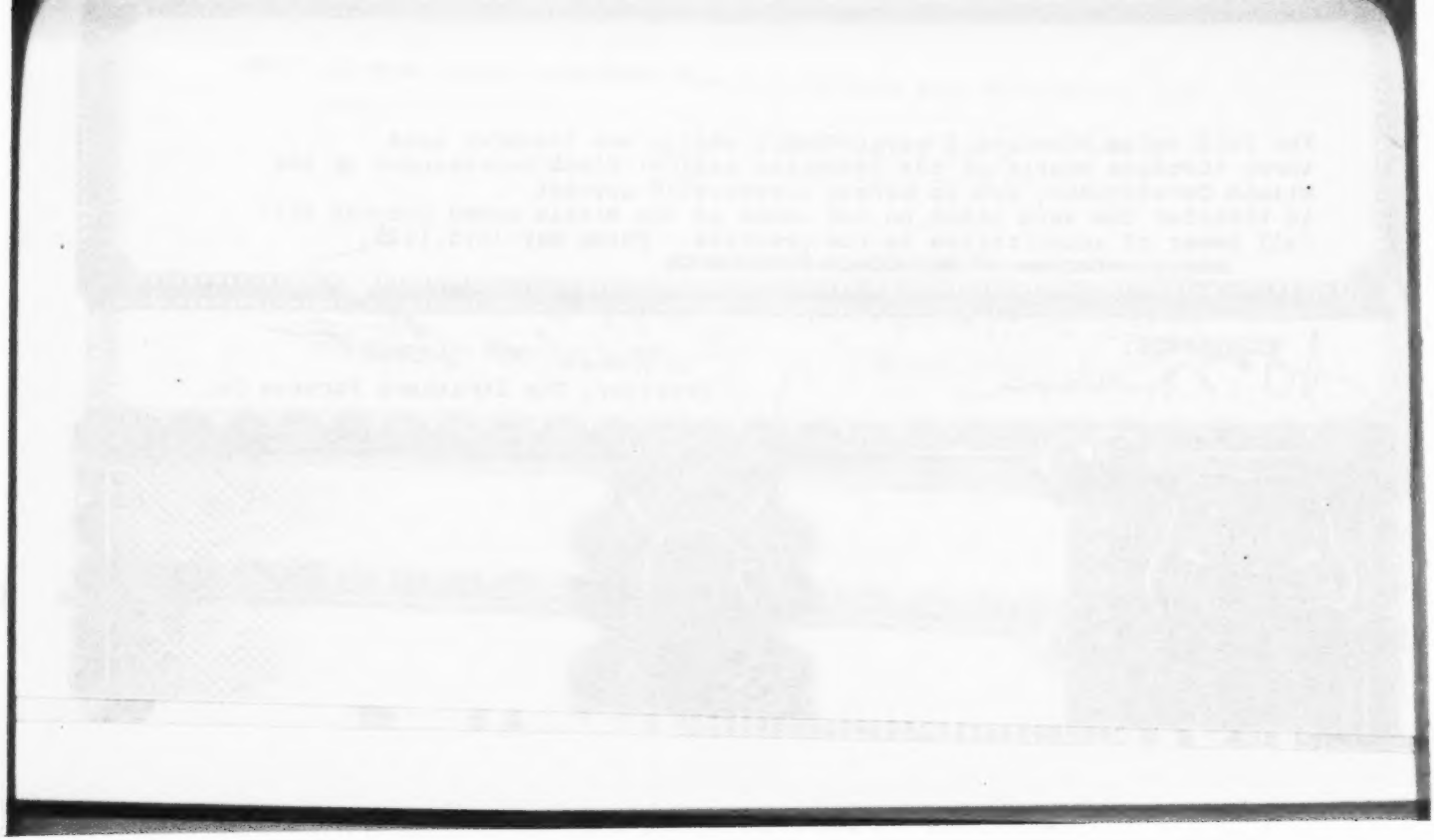
of the Preferred Capital Stock represented by the within certificate, and do hereby irrevocably constitute and appoint attorney to transfer the said stock on the books of the within named Company, with full power of substitution in the premises.

Dated Jany 20. 1923

W. A. Runyon Trustee

In presence of

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement or any change whatever.



Q. Mr. Domer, are you familiar with the accounting that was made by the Guardian Savings and Trust Company or by A. B. Leach and Company through the Guardian Savings and Trust Company for the purchase of these bonds? A. Yes, sir.

Q. Can you give us that as to the manner in which the purchase price was paid, either in stock or cash?

Mr. Johnston: My understanding is this was by the Guardian Savings and Trust Company, Your Honor.

The Court: Yes, the money was paid in to the Guardian Savings and Trust Company.

A. The Guardian Savings and Trust Company were trustees. They handled the whole transaction.

The Court: We are only interested in the accounting on the $450,000.00 of bonds which was to be paid for in part by the surrender of three thousand shares of preferred stock. Have you that separated in your account?

The Witness: Yes, sir. And there was preferred dividend accrued, preferred dividend paid to A. B. Leach and Company in addition to the $85.00 per share for the preferred stock.

The Court: Accrued between what period?

The Witness: From May 1st, up until the various dates that this stock was taken up.

The Court: And do you know how much the amount was accrued? I mean the aggregate that you paid them.

The Witness: $1513.94.

Q. So far as you know Mr. Domer, was there any action ever taken by the board of directors with reference to declaring a dividend for the period, or any period or any quarter subsequent to May 1, 1922? A. No, sir.

The Court: There was no action taken to declare a dividend; there was an action taken to pass a dividend?

The Witness: There may have been an action to pass a dividend; not paying.

CROSS EXAMINATION by Mr. Johnston.

The figures with reference to the amount of accrued dividend that was allowed to A. B. Leach and Company upon this stock were copied from my own records, which were copies from the Guardian Savings and Trust Company statement. I personally did not handle the distribution of any of that money of the A. B. Leach Company. Neither did the Struthers Furnace Company. That was all done by the Guardian Savings and Trust Company. I think the Struthers Furnace Company gave the Guardian Savings and Trust Company instructions with reference to how this distribution was to be made. I recall that there was a letter on the subject written by the Struthers Furnace Company.

RE-DIRECT EXAMINATION by Mr. Henderson.

With reference to the papers marked Plaintiff's Exhibits 14A, B and C, I know that copies of the letter marked 14A, enclosing the consent in proxy B and followed up by the letter of April 20, went to the preferred stockholders of the Struthers Furnace Company. They were mailed. I have with me the consents of all the preferred stockholders who signed consents to the making of this bond issue. They are all in the same form as the consent which is marked B and attached to Exhibit 14A. I made a tabulation as to how many shares of the preferred stock consented to the bond issue in addition to the 3000 shares then held by A. B. Leach & Company. I have not the tabulation here. The paper you hand me marked Plaintiff's Exhibit 15 is a correct tabulation of the total number of shares for which consent was given to this bond issue. The total number is 9911 shares. Of that number, there were 9742 consents received up to the time of the actual passage of the resolution for the bond issue. The latter amount includes the 3014 shares then held by A. B. Leach & Company.

Thereupon Plaintiff's Exhibits 14A, 14B and 14C were received in evidence, said exhibits being, respectively, as follows:

PLAINTIFF'S EXHIBIT NO. 14-A.

Letter of April 3, 1922 to Preferred Stockholders.

THE STRUTHERS FURNACE COMPANY,
CITIZENS BUILDING,
CLEVELAND, OHIO.

April 3, 1922.

To the Preferred Stockholders

As you probably are aware, the year 1921 was a year of comparative inactivity in the Iron and Steel business. Production dropped to the lowest point in many years in the industry. The Company operated for twenty-one days in January 1921, by which time sufficient iron had been manufactured to fill all sales contracts on the books. Operations then ceased, and examination of the furnace showed that it would be necessary to reline before again resuming the manufacture of pig iron. We accordingly proceeded with the relining of the furnace, and the making of all necessary repairs, and today the plant is in a high state of efficiency.

Owing to the fact that nearly all consumers of iron were in the position of having either large stocks of iron on hand, or contracts calling for the delivery of iron, there was no market for our product throughout the year, except at prices which would have involved far greater losses than we sustained by remaining idle. Fixed charges have been cut to an absolute minimum, and only the nucleus of an organization maintained. By the nucleus of an organization we mean only heads of departments who have been with the Company for a long period of time, and are thoroughly experienced in their respective duties. If the proposed coal strike is of short duration, and the Interstate Commerce Commission renders its decision on the question of freight rates, we will resume operations in the near future.

At the time when we ceased operations, this Company had on hand a large inventory of iron ore and pig iron. The pig iron has been shipped on contracts. The iron ore has been marked down to present market levels, and today stands on the books at approximately $1,390,000.00. This inventory has naturally made it necessary for the Company to borrow a considerable amount of money, the sum of our floating indebtedness at this time being approximately $1,050,000.00. It is deemed advisable by the Directors of the Company to

authorize, issue, and dispose of an issue of not exceeding $1,500,000.00 par amount of bonds secured by mortgage upon the real estate, plant and equipment of the Company, to provide funds for the payment of floating indebtedness, additional working capital, and for other corporate purposes. You are aware, of course, that all dividends on the preferred stock have been paid to date. It is because of our desire to maintain a strong financial position that we wish to fund our present floating indebtedness. We have discussed the matter with A. B. Leach & Company, Inc., of New York, who sold our preferred stock, and the proposed financing carries with it their unqualified approval. As it is necessary for the Directors to act in the near future, we request that you fill in, sign, and return promptly the enclosed Consent and Proxy.

Yours very truly,

THE STRUTHERS FURNACE COMPANY,
W. C. RUNYON,
President.

PLAINTIFF'S EXHIBIT 14-B.

Consent and Proxy.

THE STRUTHERS FURNACE COMPANY,

Consent and Proxy.

The undersigned, a stockholder of The Struthers Furnace Company, hereby waives any and all notice required by the Company regulations or by law of a special meeting of the stockholders of said Company to be held at the office of the Company, Cleveland, Ohio, on a day and time to be hereafter fixed by the Board of Directors, for the purpose of authorizing an issue of First Mortgage Bonds of the Company in a sum not to exceed $1,500,000.00 par amount, the payment of said bonds to be secured by a mortgage conveying the real estate, plant and equipment of the Company.

The undersigned also appoints W. C. Runyon, W. C. Runyon, Jr. and George A. Coulton, or any one or more of them with full power in each to substitute an attorney and proxy in his place and stead, true and lawful attorneys and proxies of the undersigned to appear and to vote, consent and act in respect to all stock of said Company standing in the name of the under-

signed at said special meeting of stockholders or any adjournment thereof, on any and all questions that may be presented at said meeting, hereby ratifying and confirming all acts of said proxies or substitutes.

A majority of said proxies present at said meeting or any adjournment thereof may exercise the foregoing powers, and if only one proxy is present he may exercise the powers vested in said proxies.

The undersigned hereby also consents and agrees that said Company by and through its directors and officers may authorize, issue and dispose of an issue of bonds of the Company not to exceed $1,500,000.00 in total par amount, bearing interest at not exceeding 8% per annum, payable semi-annually, maturing at not exceeding twenty years from the date thereof, and secure the payment of principal and interest of said bonds by a mortgage upon the real estate, plant and equipment of the Company, said bonds and mortgage to contain such terms and conditions and said bonds to be sold at such prices and for such purposes, all as may be determined by resolutions of the Board of Directors of the Company.

WITNESS the name of the undersigned April, .., 1922.

.....

Signed in the presence of:

.....

PLAINTIFF'S EXHIBIT NO. 14-C.

Letter of April 20, 1922 to Preferred Stockholders.

THE STRUTHERS FURNACE COMPANY,
CITIZENS BUILDING,
CLEVELAND, OHIO.

April 20, 1922.

To the Preferred Stockholders:

Under date of April 3rd, we wrote you relative to the authorization of an issue of bonds secured by mortgage on the fixed assets of this Company. A consent and Proxy was enclosed with that letter, but to date we have not received a reply from you.

The rate at which the consents have been coming in from our Preferred Stockholders has been most gratifying and would seem to indicate the realization, by the Stockholders, that their interests will be conserved

and strengthened by the proposed financing. We are, however, desirous of hearing from as large a proportion of our Stockholders as possible and feel that, probably, your failure to execute and return the Proxy sent you, is due to an oversight.

We are, therefore, writing you again and urgently request that you sign the Proxy, have it witnessed, and return to us at once. As it is possible you may have mislaid the Proxy sent you recently, we are enclosing herewith a copy of same.

Your prompt attention will be appreciated.

Very truly yours,

THE STRUTHERS FURNACE COMPANY,
(Signed) W. C. RUNYON,
President.

WCR-KFL

RE-CROSS EXAMINATION by Mr. Johnston:

The balance sheet shown upon the audit of Ernst and Ernst (Defendant's Exhibit C), about which I testified, is a balance sheet made up prior to the bond issue. The balance sheet was also made up prior to the appraisal of the properties by Freyn-Brassert and Company or Brassert and by Lyons. The balance sheet merely reflects what was shown on the books before these appraisals were made. There was a surplus of $82,-250.53 as of December 31, 1921, in addition to the preferred stock which was taken at par ($1,250,000.00) and common which was taken at $1,000,000.00. I testified that the quick asset position of the company did not improve between January 1, 1922, and May 1, 1922, but that on the contrary it was impaired. I could not state whether there was any increase in inventory during that period. What I meant to say by my previous statement with respect to the impairment of net quick assets was that the loss from operations naturally impaired the net quick assets during the period above mentioned. There could not have been an increase in inventory during said period for the reason that we were not then operating. The plant was shut down. There was during that period no perceptible increase of accounts receivable. If they increased the inventory they would decrease correspondingly the property. I have not made any investigation as to whether or not the other elements

which entered into the question of amount of net quick assets were affected. I have assumed that because there was an operating loss in the sum heretofore stated that said loss resulted in an impairment of net quick assets to the full amount of the operating loss. I know that subsequent to December 31, 1921, and in connection with the proposed bond issue, Ernst and Ernst made a new balance sheet reflecting the condition of the company after giving effect to the bond issue and to the appraisals. I have not seen the balance sheet made by Ernst and Ernst. The document you show me (Plaintiff's Exhibit G for identification) is a copy of the balance sheet that was prepared after giving effect to the refinancing and the appraisals. It is approximately correct, I suppose. I do not recognize the balance sheet.

Q. Well, did you make up a balance sheet of the affairs of the Struthers Furnace Company after the bond issue and after the appraisals? A. Well, you must understand the only balance sheet we had was December 31, 1921; there was nothing prepared from that date until December 31, 1922, that was actual; it was all based on assumptions.

Q. But after the bond issue you of course took the bond issue into account in all your statements? A. No, we didn't until December 31, 1922.

Q. And you didn't issue any statements, you mean, until December? A. We didn't put it into our books until the end of the year; that is, the appraisal.

Q. The bonds were put on the books and were issued and you received the money? A. Yes.

Q. It was sometime in May or June of 1922? A. May and June.

Q. The appraisal figures you didn't actually, you say, set upon your books until the close of the year, until the time you would ordinarily put out your balance sheets for the year? A. Yes.

Q. Then you did place those figures on your books? A. Yes.

Q. Did you adopt the figures of Mr. Brassert upon the plant? A. Yes.

Q. And upon the valuation of your interest in the Wade-Helmer mine? A. Not that.

Q. Didn't adopt that? A. No.

Q. Did you adopt the figures of Mr. Lyon on the real estate? A. Yes.

Q. How did you depart from his appraisal on the Wade-Helmer mine? A. We have a complicated system of accounting of our Wade-Helmer mine; owning a half interest, our books must reflect that half interest, and we are compelled to keep our books to reflect that half interest on the statements furnished by the other half owner; therefore we thought we had better not monkey with it.

Q. That is, you mean you left the valuation as it was? A. Left the valuation as it was. However, on our balance sheets we would make a notation that its value was appraised at $710,000.00 by Mr. Brassert.

Q. And you did make such a notation upon your subsequent balance sheets? A. Yes, sir.

Q. Do you recall whether or not there was furnished to Leach and Company, or prepared at least for the purposes of this bond issue, a statement showing the earnings of the Struthers Furnace Company from the period May 1, 1911, to December 31, 1921? A. Yes, sir, I did.

Q. Will you look at this statement which has heretofore been marked Defendant's Exhibit D, but is not in evidence, and tell us whether or not that is the statement that was so prepared? A. This appears to be a copy of the statement so prepared.

The Court: Was the original prepared under your supervision?

The Witness: No, it was prepared entirely by Ernst and Ernst from company's reports.

Q. However, you were cognizant of the fact that it was being prepared? A. Yes.

Q. It was brought to your attention at the time? A. Yes.

Q. This report was prepared sometime in the spring of 1922? A. Yes, sir.

Q. At least it was—your answer to that question was yes? A. My answer was yes.

Q. And this purports to show the profits for the year 1921 complete, December 31, so it must have been after that date? A. Yes, sir.

Q. Mr. Domer, I will ask you this question, whether the Struthers Furnace Company gave instructions to the Guardian Savings and Trust Company with respect to the manner of handling these bonds? I will ask you to look at that letter bearing date May 24, 1922, and state if you know whether or not the original of that was sent by the Struthers Furnace Company to the Guardian Savings and Trust Company? A. Yes, sir, that is a copy of the letter.

Mr. Johnston: We will offer this in evidence as Defendant's Exhibit H.

The letter last above referred to, marked Defendant's Exhibit H, was thereupon received in evidence, and is as follows:

DEFENDANT'S EXHIBIT NO. H.

Letter, Dated May 24, 1922, Struthers Co. to Guardian Trust Co.

THE STRUTHERS FURNACE COMPANY
MANUFACTURERS OF PIG IRON,
CITIZENS BUILDING,
Cleveland, Ohio.

May 24, 1922.

The Guardian Savings & Trust Co.,
Cleveland, Ohio.

Gentlemen:

Referring to The Struthers Furnace Company issue of $1,500,000 par value of First Mortgage Sinking Fund Eight Per Cent Gold Bonds, dated May 1, 1922, secured by a First Mortgage Trust Deed under which you are Trustee, which mortgage has been filed for record as a mortgage of real property in the office of the Recorder of Mahoning County, Ohio, all of which bonds have been signed by the Company and delivered to you, will you please authenticate said bonds and deliver the same as hereinafter stated.

All of said bonds have been sold by the Company to A. B. Leach & Co., Inc., at the price of 90½ plus accrued interest and the first $800,000 par value of said bonds to be taken and paid for by A. B. Leach & Co., Inc., are payable in cash upon delivery at the price aforesaid. The next $450,000 par value of bonds taken by A. B. Leach & Co., Inc., are to be paid for by A. B. Leach & Co., Inc.,

on the following basis: for every $1500.00 par value of bonds at the price of 90½ plus accrued interest, there shall be delivered 10 shares of The Struthers Furnace Company preferred stock at $85.00 per share and accrued dividend from May 1, 1922, being the last dividend paying date, at 7%, and the balance of said purchase price is to be paid in cash.

The remainder of said issue of bonds, to-wit: $250,000 par value thereof are to be paid for by A. B. Leach & Co., Inc., at the price of 90½ plus accrued interest in cash upon delivery.

All certificates of preferred stock of this Company, delivered by A. B. Leach & Co., Inc., in pursuance of the foregoing, are to be duly endorsed in blank and witnessed in the form complying with the requirements of the Cleveland Stock Exchange in reference to the delivery of stock certificates.

A. B. Leach & Co., Inc., may take up and pay for said bonds as aforesaid at any time within one hundred and twenty-five (125) days from the date hereof.

Will you please make delivery of said bonds to the order of A. B. Leach & Co., Inc., as above, upon receipt for our account of cash and preferred stock as above stated.

Very truly yours,

THE STRUTHERS FURNACE COMPANY
By (Signed) N. C. RUNYON, JR.,
Vice President.

Q. Will you look at Exhibit G, which is the balance sheet I showed you a short time ago, and which you stated, I believe, is approximately correct, and will you state to the Court what the net quick assets are as shown from that balance sheet?

The Court: That is, after taking into account the receipts from the bonds.

A. Yes, sir. They are $1,542,223.39.

The Court: That increased them over the former statement of December 31st, by what amount?

The Witness: Well, I haven't that.

The Court: The audit shows net quick assets in what amount, according to your reading of it?

The Witness: $434,442.18.

The Court: What items do you count as net quick assets?

The Witness: Cash, United States Government Securities, accounts receivable, inventory, life insurance, cash surrender value. However, that is only the debit side. Do you want to know what I consider as the credit against the asset to make it net?

The Court: All right.

The Witness: Notes payable for borrowed money, accounts payable and accrued accounts, such as taxes.

The Court: The funded debt like this bond issue you would not count against the quick assets?

The Witness: No, sir.

Q. That goes against the quick assets, plant, equipment and real estate? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Henderson.

Q. In determining what you have made reference heretofore as net quick assets, have you deducted from what we might refer to as gross quick assets, all of the indebtedness of the company? A. No, sir.

Q. Have you deducted all of the indebtedness of the company except the amounts owing on the bonds? A. We haven't deducted the capital stock; we haven't deducted any other company account.

Q. That is, any other company account of some transaction between the Struthers Furnace Company and the Struthers Coal and Coke Company? A. Yes.

Q. What was the nature of that indebtedness? A. It was probably at that time advanced money from one to the other.

Q. But it did appear on the books of the company as a charge against the Struthers Furnace Company? A. As a credit to the Struthers Coal and Coke Company, and against that we would have the value of our stock on the debit side.

Q. What was the amount of that? A. I didn't include that on either side because we didn't consider it very much of a quick asset.

Q. What other indebtedness did you include, or rather deduct? A. All of the accounts and notes payable, accrued taxes. That's all there was.

Mr. Henderson: That's all.

RE-CROSS EXAMINATION OF ROY H. DOMER
by Mr. Johnston.

Q. Mr. Domer, there is one more line of questions I would like to ask you, please. You are familiar, as the auditor for the receiver, with the list of unsecured creditors of the Struthers Furnace Company as of the date of the appointment of the receiver, are you not? A. Yes, sir.

Q. Did you prepare a list of such unsecured creditors showing the dates that these respective claims against the Struthers Furnace Company were incurred? A. Yes, sir.

Q. May I show you this statement and ask you whether that was prepared either by you or under your direction for the purpose of showing those facts? (Handing to witness) A. Yes, sir.

Q. The pen figures following the name of the creditor I take it represent the date upon which that particular person or company or partnership became a creditor? A. Yes, as far as the record shows.

Q. That is to say, when the debt was incurred? A. Yes.

Q. And these figures are taken from the records of the Struthers Furnace Company? A. Yes, sir.

Mr. Johnston: We offer this statement in evidence as Defendant's Exhibit I.

The document last above referred to, marked Defendant's Exhibit I, was thereupon received in evidence, and is as follows:

UNSECURED CREDITORS

Accounts Payable	Assumed	Formally Claimed	Contra Account	Total Net
American Heat Economy Bureau 6/28/24		$4912.50	$	$4912.50
Browning Company 11/24/24		58.15	1025.00	966.85
Burroughs Adding Machine Co. 12/8/24		4.99		4.99
Corlies Macy & Company 12/31/24		6.00		6.00
Cleveland-Cliffs Iron Co.	$36948.61 - 10/1/24 To 1/19/25		6695.34	30253.27
Crescent Towel Supply Co. 1/1/25		5.30		5.30
J. A. & D. P. Cooper Co. 1/1/25	10.00			10.00
Dittmar & Benson 12/31/24		.60		.60
Ernst & Ernst 6/30/24		9249.02		9249.02
Pollansbee Bros. Co. 12/26/24	26.00			26.00
H. Frank Company 12/27/24	47.15			47.15
Great Bear Spring Co. 1/1/25		2.00		2.00
Harbison-Walker Refractories Co. 7/1/24		1687.50		1687.50
C. B. Harris 1/8/25		1.45		1.45
Independent Warehouses, Inc. 11/29/24 To 1/19/25	4437.11			4437.11
Iron Trade Review 12/25	6.00			6.00
Knickerbocker Ice Co. 1/1/25		3.78		3.78
Mahoning Valley Water Co. 12/26/24		3.74		3.74
Malona-Hull Hardware Co. 12/27/24		4.26		4.26
J. C. McHenry 12/23/24		3.00		3.00
Monongahela Railway Co. 12/19/24	21.99			21.99
New York Telephone Co. DEC-30/24 To 1/20/25		92.45		92.45
Penna-Ohio Power & Lt. Co. 11/11/24 To 1/19/25	319.51			319.51
Pgh. & Lake Erie R. R. Co. 7/1/24 To 1/19/25	4116.21		1886.86	2229.35
Redding & Company 12/11/24		26.30		26.30
Stambaugh-Thompson Co. 1/8/25		3.45		3.45
Standard Oil Co. 1/7/25		2.85		2.25
Traffic Club of Pgh. 12/18/24	22.00			22.00
E. H. Treudley & Co. 12/1/24		1.00		1.00
Tolles, Hogsett, Ginn & Morley 7/24/23 To 12/31/24		3598.18		3598.18
Wm. A. Ullman 1/10/25		176.00		176.00
Union Trust Co. 1/1 To 12/31/24		300.00		300.00
Western Elec. Co., Inc. 12/6/24		6.50		6.50
Western Union Telegraph Co. 1/7 To 1/19/25		21.73		21.73
Wheeler Mineral Spring Co. 12/1/24		3.00		3.00
Guardian Svg. & Tr. Co., (Fed. income tax on bonds) YEAR 1924	649.91			649.91
Unclaimed Wages 1910 To 1920	107.19			107.19
Alice R. Hart, Trustee 4/25/19	44.26			44.26
W. C. Runyon, Jr., Trustee 5/25/20	15.06			15.06
	$4671.00	$20173.15	$9607.20	($966.85 (58303.80

Notes Payable			
Davidson Ore Mining Co. 4/2/23	$81,150.16		$124,303.23
Marquette Ore Co. 1/22/24	43,153.07		2,500.00
The Struthers Coal & Coke Co. 11/22/24			
Accrued Accounts - To 1/19/25			
Bond Interest 11/1/24	86,333.33		
Taxes-real estate & personal 1/1/24	37,985.66		
Interest on notes payable (secured Notes) 11/1/24	23,355.87		
Interest on notes payable (unsecured notes) 11/1/24	586.18		
Wages 1/1/25	2,237.00		150,652.06
Miscellaneous 1/1/25	154.02		
		Total	$333,652.06 966.85

Defendant's Exhibit No. [illegible]

Mr. Henderson: Are these all creditors subsequent to the date of the bond issue, Mr. Domer, as shown on this paper?

Mr. Johnston: Supposed to be all the creditors.

The Court: I understood him to say a list of the creditors at the time the receiver was appointed, and that the figures in pen were the dates when those debts had been contracted for the liability.

The Witness: That is correct.

WALTER C. RUNYON was recalled by plaintiff for further examination and testified as follows on DIRECT EXAMINATION by Mr. Wilson.

The Struthers Furnace Company did not give any notice that I know of to preferred or common stockholders of the option which had been given to Leach and Company on April 15 to exchange preferred stock for bonds. No offer was made by the Struthers Furnace Company to any other preferred stockholders to exchange bonds for their stock.

CROSS EXAMINATION by Mr. Day.

I attended a meeting of the common stockholders on May 5, 1922. There was presented at the meeting a contract between Leach and Company dated April 15, 1922, with a modification covering the sale of bonds above mentioned. That contract was considered and upon motion duly made, seconded and unanimously carried approved by the common stockholders at that meeting.

Mr. Henderson: I desire to offer in evidence a document the authenticity of which is conceded, marked Plaintiff's Exhibit 16; a letter dated December 5, 1921, from A. B. Leach and Company to Walter C. Runyon, Junior, vice-president, Struthers Furnace Company, marked Plaintiff's Exhibit 17.

Mr. Johnston: Well, I think it is immaterial and incompetent, and I object to it for that reason, since it refers to the negotiations which Mr. Runyon has said were terminated subsequently and then resumed later.

The Court: Oh, I think it is immaterial. The objection to Exhibit 17 is sustained. Exhibit 16 may be admitted.

Thereupon, Plaintiff's Exhibit 16 was received in evidence, said exhibit being as follows:

PLAINTIFF'S EXHIBIT NO. 16.

Consent and Proxy.

THE STRUTHERS FURNACE COMPANY

Consent and Proxy.

The undersigned, a stockholder of The Struthers Furnace Company, hereby waives any and all notice required by the Company regulations or by law of a special meeting of the stockholders of said Company to be held at the office of the Company, Cleveland, Ohio, on a day and time to be hereafter fixed by the Board of Directors, for the purpose of authorizing an issue of First Mortgage Bonds of the Company in a sum not to exceed $1,500,000 par amount, the payment of said bonds to be secured by a mortgage conveying the real estate, plant and equipment of the Company.

The undersigned also appoints W. C. Runyon, W. C. Runyon, Jr., and George A. Coulton, or any one or more of them with full power in each to substitute an attorney and proxy in his place and stead, true and lawful attorneys and proxies of the undersigned to appear and to vote, consent and act in respect to all stock of said Company standing in the name of the undersigned at said special meeting of stockholders or any adjournment thereof, on any and all questions that may be presented at said meeting, hereby ratifying and confirming all acts of said proxies or substitutes.

A majority of said proxies present at said meeting or any adjournment thereof may exercise the foregoing powers, and if only one proxy is present he may exercise the powers vested in said proxies.

The undersigned hereby also consents and agrees that said Company by and through its directors and officers may authorize, issue and dispose of an issue of bonds of the Company not to exceed $1,500,000 in total par amount, bearing interest at not exceeding 8% per annum, payable semi-annually, maturing at not exceeding twenty years from the date thereof, and secure the payment of principal and interest of said bonds by a mortgage upon the real estate, plant and equipment of the Company, said bonds and mortgage to contain such terms and conditions and said bonds to be sold at such prices and for such purposes, all as may be determined by resolution of the Board of Directors of the Company.

WITNESS the name of the undersigned April 15, 1922.

(Signed) A. B. LEACH & Co. INC.
H. C. ZINTSCH,
Vice Pres.

Signed in the presence of:
F. M. LAPP.

Plaintiff's Exhibit 17, which was not admitted in evidence, is attached as an appendix to this statement of evidence.

Plaintiff called as a witness in his behalf HORACE C. ZWETSCH, who, being first duly sworn, testified as follows on DIRECT EXAMINATION by Mr. Henderson:

My name is Horace C. Zwetsch. My business at the present time is investment banking. I am associated with A. M. Lambert and Company, 44 Pine Street, New York. In April, 1922, I was associated with A. B. Leach & Company in the capacity of Vice-President, with offices in the Guardian Building in Cleveland. Referring to the paper you hand me marked Plaintiff's Exhibit 12, I do not recall ever having seen it before. The document is on a letterhead of A. B. Leach & Company, Inc., of Cleveland, but it was never sent out from this office. I do not know whether it was sent out from any of the other offices of A. B. Leach and Company. I know that the document was not sent out from this office because all our letters are initialed. The document is the form of a circular letter. Attached to the letter are the initials CBC, possibly the initials of Mr. Campbell, whose initials are CBC. His office was located in New York City. He was the Vice-President of A. B. Leach and Company.

Mr. Henderson: I desire to offer in evidence Plaintiff's Exhibit 12.

Mr. Johnston: This is the one counsel questioned about. It looks as if it had been sent out, but we have no recollection of it or cannot find anybody who did. It apparently was not sent out from the offices of Leach and Company. I mean to say it was not actually prepared and mailed from their offices. It is on their letterhead.

The Court: Oh, well, I don't see that it adds anything to the case or takes from it. It may be received.

Said document is as follows:

PLAINTIFF'S EXHIBIT NO. 12.

Letter to Stockholders, Struthers Furnace Co., April 3, 1922.

A. B. LEACH & Co. INC.

Guardian Trust Bldg.,
Cleveland, Ohio,
April 3, 1922.

To the Preferred Stockholders of Struthers Furnace Company.

You have recently received from the Struthers Furnace Company a blank proxy to sign authorizing the issuance of $1,500,000 8% 20 Year Sinking Fund Gold Bonds.

We have made a very exhaustive examination of the situation covering several months. The property has been only recently appraised and audits completed. It is our judgment that the interests of the Preferred Stockholders will be conserved by the Company paying its bank loans and floating indebtedness with an obligation extending over a period of years and be left sufficient working capital to operate.

It is our firm belief that this refinancing puts this Company in a very much stronger financial position than it has ever been and will enable it to continue its operations practically independent of bank loans and floating debts.

We unhesitatingly recommend that you give your consent.

Very truly yours,
A. B. LEACH & Co., INC.

CBC.T

Mr. Wilson: A certain issue is joined in the answer and reply, the answer pleading an estoppel, and the reply alleging certain facts growing out of the commencement of a suit here by a preferred stockholder in November of 1922. I am not sure but this evidence should be introduced by the plaintiff in rebuttal, or it may be introduced in defense here.

The Court: Well, I don't know, it depends on the state of your pleadings.

Mr. Wilson: They plead that interest was paid on these bonds up to a certain time. They have proven that, and they aver that nothing was done by anybody to protest, that is, nothing was done by the directors of the company or by the company to attack the validity

Mr. Wilson: No, there was not, but a suit was commenced by a preferred stockholder who was represented by this receiver, attacking the validity of that transfer, in November, about the time of the first payment of interest on these bonds.

The Court: Well, did it go to judgment?

Mr. Wilson: It did not, Your Honor. It was composed. Leach and Company were made parties to the suit. The Guardian Savings and Trust Company were made parties and the Struthers Furnace Company. This man prays on his own behalf and on behalf of other stockholders. It is just a matter of the order of proof. Shall I introduce it now?

The Court: There is no importance to be attached to the order of proof. This is one of the lawsuits in which you bring in all of the facts and lay them on the clerk's desk and ask the Court what is the judgment of the law on the facts.

Mr. Wilson: I have agreed with the defendant's attorney instead of bringing the clerk, we will introduce a copy of the petition.

Mr. Day: We don't care anything about proving it that way. We don't see any competency whatever.

The Court: Well, I don't see that it is incompetent. I think that the pleadings in that case and the final disposition of it are proper to be introduced in evidence. It may go in under objection as immaterial and incompetent, and exception if desired.

Mr. Day: We, we do desire an exception.

The Court: I assume there is no objection to using copies.

Mr. Day: No.

Mr. Wilson: I offer in evidence Plaintiff's Exhibit 19, being the petition filed by Frank C. Caine, Court of Common Pleas, Cuyahoga County, Ohio, against the Struthers Furnace Company and A. B. Leach and Company incorporated, and the Guardian Savings and Trust Company, trustee.

The Court: Were answers filed?

Mr. Wilson: As I understand it, there was a demurrer filed which was not passed on when it was settled. I don't find the journal entry here, but I will beg leave to file the journal entry of final disposition of this case, and we may consider it in this case.

Mr. Day: Certainly.

Said Plaintiff's Exhibit 19 is as follows:

PLAINTIFF'S EXHIBIT NO. 19.

Petition in Caine vs. Struthers Furnace Co., et al.

IN THE COURT OF COMMON PLEAS.

No. 205,671.

State of Ohio,
Cuyahoga County, ss.

Frank C. Caine,
1315 Citizens Bldg.,
Cleveland, Ohio,
Plaintiff,

vs.

The Struthers Furnace Co.,
Struthers, Ohio,
A. B. Leach & Co., Inc.,
Guardian Bldg.,
Cleveland, Ohio,
&
The Guardian Savings &
Trust Co., Trustee,
Guardian Bldg.,
Cleveland, Ohio,
Defendants.

ACTION FOR EQUITABLE RELIEF.

The plaintiff says, that The Struthers Furnace Company, is a corporation, organized under the laws of the State of Ohio, with its principal place of business in Struthers, Ohio, where it is engaged in the manufacture and production of pig iron, and that the defendant, A. B. Leach & Company, is a corporation, organized under the laws of the State of New York, with its principal place of business in the City of Cleveland, where it is engaged in buying and selling on its own account and for others stocks and bonds and other securities, and that the defendant, The Guardian Savings & Trust Company, is a corporation, under the laws of the State of Ohio, engaged in the banking business in the City of Cleveland, having under its charter the power to act as a trustee.

FIRST CAUSE OF ACTION.

Plaintiff, for his first cause of action, says, that in the latter part of the year 1919 and the early part of

the year 1920 the defendant, The Struthers Furnace Company, issued and sold a large amount of Cumulative Preferred Stock of that Company and that this plaintiff purchased three hundred (300) shares of said preferred stock, paying therefor the price of Ninety-nine Dollars (99.00) a share and accrued dividends, which was the market price at which The Struthers Furnace Company was then offering its preferred stock for sale, and that it was provided by the Articles of Incorporation of The Struthers Furnace Company and the amendment thereto as follows:

> "No mortgage or other lien other than a purchase money mortgage shall be placed upon the real estate, plant or equipment of the Company, nor shall any bond, debentures, notes or other similar indebtedness having a maturity beyond one year, be issued or created or guaranteed, nor shall any additional preferred stock having priority over or parity with this issue of preferred stock, be issued except in each case with the affirmative vote or consent in writing of the holders of three-fourths in amount of the preferred stock of this issue then outstanding."

Plaintiff says, that said provision limiting the right of said company to place a mortgage or other lien upon the real estate, plant or equipment of the company, or issuing bonds, was written into and made a part of the certificates of preferred stock issued and sold by said defendant at said time, and that said provision was contained in the certificates of the three hundred shares of the preferred stock purchased by this plaintiff, and said provision was relied upon by this plaintiff and constituted a part of the consideration and inducement in causing this plaintiff to purchase the three hundred shares of the preferred stock.

The plaintiff says, that on or about the first of May, 1922, the defendant, The Struthers Furnace Company, issued and sold bonds to the amount of One Million Five Hundred Thousand Dollars ($1,500,000.00), which bonds were in the denominations of One Thousand Dollars, Five Hundred Dollars and One Hundred Dollars and were due and payable on May the first, 1942, said bonds bearing interest at the rate of eight (8) per cent per annum, payable semi-annually on the first day of May and November of each year, and that to secure the payment of

said issue of bonds The Struthers Furnace Company executed and delivered a first mortgage to the defendant, The Guardian Savings & Trust Company, which mortgage conveyed to The Guardian Savings & Trust Company, as trustee, for the benefit and protection of the holders of said bonds the entire fixed property and equipment, including all Railway Rolling Stock of The Struthers Furnace Company then owned by the company or thereafter acquired, and including an undivided one-half interest in certain ore mines, which interest was then owned by the Struthers Company, so that there was then placed upon the real estate, plant and equipment of the company said mortgage for the purpose of protecting and guaranteeing the payment of said bonds, and the plaintiff says, that said action of issuing and selling said bonds and executing said mortgage upon the real estate, plant and equipment of The Struthers Furnace Company was done by The Struthers Furnace Company without first obtaining the affirmative vote or consent in writing of the holders of three-fourths in amount of the preferred stock of the aforesaid issue then outstanding, and that in taking this action The Struthers Furnace Company did so in violation of the rights of this plaintiff and other owners and holders of said preferred stock and in violation of the charter provisions of said company and in violation of the terms and provisions in this respect contained in the certificates of preferred stock issued by the company and purchased by the plaintiff and others, and that the three hundred shares of preferred stock then owned by the plaintiff were thereby diminished in value, and that on account of this unwarranted and unlawful action of The Struthers Furnace Company in violation of the rights of the plaintiff and other owners of preferred stock, the plaintiff has suffered an irreparable injury and that he has no adequate remedy at law, and that he will continue to suffer irreparable injury unless he is granted relief by the equitable action of this court hereinafter prayed for.

Second Cause of Action.

The plaintiff for his second cause of action, adopts all of the allegations in the first cause of action, the same as if they were rewritten herein and says further, that the defendant, The Struthers Furnace Company,

and the defendant, A. B. Leach & Company, entered into an unlawful agreement by which The Struthers Furnace Company agreed to and did purchase from A. B. Leach and Company three thousand (3,000) shares of the said preferred stock of The Struthers Furnace Company and paid A. B. Leach & Company for the same with the bonds or the proceeds from the sale of the bonds of the aforesaid bond issue, and that in doing so The Struthers Furnace Company wrongfully and unlawfully gave preference to A. B. Leach & Company over this plaintiff and other preferred stockholders in the redemption and retirement of its preferred stock, and that The Struthers Furnace Company did not offer to this plaintiff and other preferred stockholders the right and privilege to have his or their stock redeemed in whole or in part or in any ratio or portion whatever, but that contrary to the legal and equitable rights of the plaintiff and other stockholders The Struthers Furnace Company used the bonds or the proceeds of the sale of the bonds of said issue for the purpose of redeeming three hundred thousand dollars of the preferred stock, which had been held by the defendant, A. B. Leach & Company, when the plaintiff and other stockholders were entitled to be given the opportunity by lot or otherwise to participate pro rata in the redemption of any of said preferred stock, and further, that The Struthers Furnace Company was without right and authority to issue and sell said bonds and to use the same or the proceeds thereof for the purpose of redeeming only the preferred stock held by the defendant, A. B. Leach and Company, and that the agreement and contract made between The Struthers Furnace Company in respect thereto was collusive and wrongfully made in violation of the rights of the plaintiff and other preferred stockholders, and that the plaintiff has suffered irreparable injury and damage thereby, and will so continue to suffer unless by an order of this court said transaction is declared null and void and A. B. Leach & Company is ordered to return to The Struthers Furnace Company the bonds or the proceeds thereof taken in exchange and in redemption of said preferred stock, and that the preferred stock thus received by The Struthers Furnace Company be returned to A. B. Leach & Company.

Wherefore, the plaintiff prays that the court may find that the issuance and sale of said bond issue of May the first, 1922, was in violation of the rights of the

plaintiff and other preferred stockholders, and that the execution and delivery of the said mortgage to the defendant, The Guardian Savings and Trust Company, as trustee, was also in violation of the rights of the plaintiff and other preferred stockholders and that the issuance of said bonds and the execution and delivery of said mortgage were null and void, and that the court shall decree that said mortgage is not a lien upon any of the real estate, plant, equipment or property of The Struthers Furnace Company, and that The Guardian Savings & Trust Company, as Trustee, be enjoined and restrained by the order of this court from paying any of said bonds or the interest thereon, and further, that it may be ordered and decreed by this court that the redemption of the preferred stock by delivering to A. B. Leach & Company part of the bonds of said issue or the proceeds thereof, was in violation of the rights of this plaintiff and other preferred stockholders and was unlawful and inequitable and that the same is null and void, and that the Court may further decree that A. B. Leach and Company shall return to The Struthers Furnace Company the bonds so received or the proceeds thereof, and that The Struthers Furnace Company shall deliver to A. B. Leach & Company the three thousand shares of preferred stock so unlawfully transferred and redeemed, and for such other and further relief as is just and equitable.

.....

Attorneys for the Plaintiff.

State of Ohio, ..
Cuyahoga County, ss.

Frank C. Caine, being first duly sworn upon his oath, says, that he is the plaintiff in the foregoing Action for Equitable Relief, and that the statements and allegations contained therein are true, as he verily believes.

.....

Sworn to before me and subscribed in my presence by the said Frank C. Caine this ..... day of November, 1922.

.....

Notary Public.

PRECIPE.

To the Clerk:

Please issue summons for the defendants, A. B. Leach and Company and the Guardian Savings & Trust Company, Trustee, to the Sheriff of Cuyahoga County, and issue summons for the defendant, The Struthers Furnace Company, to the Sheriff of Mahoning County, made returnable according to law.

.....

Attorneys for the Plaintiff.

Mr. Wilson: I want to introduce in evidence here a letter regarding this suit written by Leach and Company to the Struthers Furnace Company, as Plaintiff's Exhibit 20.

Mr. Day: Subject to the same objection as immaterial, incompetent and irrelevant to any issue here.

The Court: It may be received subject to the same objection and exception.

Said Plaintiff's Exhibit 20 is as follows:

PLAINTIFF'S EXHIBIT NO. 20.

Letter, Dated Nov. 22, 1922, Re Caine Suit.

A. B. LEACH & CO. INC.
62 Cedar St.

New York, November 22nd, 1922.

Struthers Furnace Company,
Struthers, Ohio.

Dear Sir:

We have been served in an action by Frank C. Caine which action is based primarily on the theory that the bonds which we bought from you were illegally issued.

We note that you were advised by eminent counsel in this matter, and we do not assume that this cause has any merit.

As it is necessary that an appearance should be made in this case on the 27th inst., we have requested your counsel in Cleveland to appear for us.

In view of the circumstances of this case, we assume that it will be agreeable to you to arrange with your

counsel to relieve us of all responsibility in this matter, and that you will have your counsel represent us along with your own company.

Kindly advise us as to this, and oblige

Very truly yours,

ABL. (Signed) A. B. LEACH & Co. INC.

(Copy sent Mr. Ginn, Nov. 27.)

Mr. Wilson: And the answer to it, Your Honor, dated November 27, as Plaintiff's Exhibit 21.

Mr. Day: Same objection and exception.

The Court: Same ruling. The record will show an objection to it for want of materiality or competency, overruled and exception allowed.

Plaintiff's Exhibit 21 is as follows:

PLAINTIFF'S EXHIBIT NO. 21.

Letter, Dated Nov. 27, 1922, Struthers to Leach, Re Caine Suit.

November 27, 1922.

Messrs. A. B. Leach & Co., Inc.,
62 Cedar St.,
New York City.

Gentlemen:

Your letter of the 22nd inst. has been forwarded to this office from Struthers, Ohio, where it was addressed.

We believe you are correct in assuming that the case of Frank C. Caine has no merit and, furthermore, we believe that Mr. Caine knew it when he brought the suit. As an accommodation we sent the consents received from the Preferred Stockholders to Mr. Ginn at Cleveland who exhibited them to Mr. Caine and his attorney, so the statement made in his application for relief will hardly bear the light.

We note that you have requested our counsel to appear for you. We have always understood that Tolles, Hogsett, Ginn & Morley were your counsel in Cleveland. I see nothing inconsistent in their acting for both parties, but, on the other hand, I see no reason why The Struthers Furnace Company should relieve your Company from any responsibility which it may justly have in the premises.

We have a letter this morning from Mr. Ginn on this subject in which he says it will probably be nine months to a year before the case comes up for trial.

Yours very truly,

THE STRUTHERS FURNACE COMPANY,

By .....

M *President.*

(Copy sent Mr. Frank H. Ginn
Nov. 27)

Mr. Wilson: I have the Journal Entry here, Your Honor, but I want to reserve the right—

The Court: It may be supplied. I think the entire proceedings on the demurrer and answer, if any were filed, as well as the orders as finally made, should go in, in order to complete that item of evidence.

Thereupon, a duly certified copy of the docket and Journal Entries was received in evidence, said documents being as follows:

DOCKET AND JOURNAL ENTRIES.

In Caine Case.

IN THE COURT OF COMMON PLEAS

No. 205671

State of Ohio,
Cuyahoga County, ss.

Frank C. Caine, *Plaintiff,* vs. The Struthers Furnace Co., *et al.,* *Defendants.*	September Term, 1922. EQUITABLE RELIEF.

November 13, 1922. Petition and precipe filed and summons to Sheriff of Mahoning County for the Struthers Furnace Co., and to Sheriff of Cuyahoga County for all other defendants issued.

November 20, 1922. Cuyahoga County Summons returned endorsed: On the 16th day of November, 1922, I served this writ on the within named A. B. Leach & Company, Inc., by delivering a true and certified copy there-

of with all the endorsements thereon to F. M. Lapp, Managing Agent for said Company, the president or other officer of said Company not found in my County. Also on the same date on The Guardian Savings & Trust Company, Trustee, by handing a like copy thereof to I. H. Beers, Managing Agent for said Company, the president or other chief officers not found in my county. Sheriff's fee $1.16.

November 27, 1922. Mahoning County Summons returned endorsed: On the 21st day of November, 1922, I served this writ on the within named Defendant The Struthers Furnace Company by delivering to Louis S. Baldwin, Supt. of said defendant Company at Struthers, Ohio, a true and certified copy thereof with all the endorsements thereon, after making diligent search for and being unable to find the president or other chief officers of said Company within my county. John Maguire, Sheriff. Sheriff's Fees $1.55.

December 16, 1922. Demurrer by The Struthers Furnace Co., A. B. Leach & Co., Inc., and The Guardian Savings & Trust Company, Trustee, filed.

December 30, 1922. To Court: The Petition is dismissed without prejudice, at the cost of the plaintiff for which judgment is rendered against him. Record waived. Journal 229, Page 1984.

January 2, 1923. To Court: By consent of parties the entry in this cause of December 30, 1922, is vacated and said cause is thereupon entered: "This cause settled, petition dismissed at cost of plaintiff." Journal 230, Page 16.

January 5, 1923. To Court: The demurrer by the defendants, The Struthers Furnace Co., A. B. Leach & Co., Inc., and The Guardian Savings & Trust Co., Trustee, to petition is stricken from the docket. Journal 230, Page 73.

$7.11 Received of Plaintiff
Seven and 11/100 Dollars
Costs. January 9, 1923.
George Wallace, Clerk.
7975 By J. C. W., Deputy Clerk.

NOTE:—This Transcript of the docket and Journal Entries in this cause is duly certified to by the Clerk of the Court of Common Pleas of Cuyahoga County, Ohio.

Thereupon, the plaintiff rested.

DEFENDANT'S EVIDENCE.

Then the defendant called as its witness, WILLIAM H. SNYDER, who, being first duly sworn, testified on DIRECT EXAMINATION by Mr. Johnston as follows:

My name is William H. Snyder. I live at 12980 Cedar Road, Cleveland Heights. I am Assistant Manager of Ernst and Ernst, public accountants and auditors. In 1921 and 1922 I was manager of the Reporting Department of Ernst and Ernst, who were then employed as auditors for the Struthers Furnace Company. In connection with the work done by Ernst and Ernst for the Struthers Furnace Company, it was my duty to supervise the work in a general way and particularly the preparation of the reports after the field work had been done. The document you hand me marked Defendant's Exhibit D and which purports to be a statement of earnings from 1911 until and including the year 1921 was prepared by me or under my direction. From the date of the report, I should say that it was prepared during the latter part of April, 1922. The date given on the first page of the report is erroneous and is manifestly due to a typographical error, for the reason that the statement of December 31, 1921, would of necessity come after April 28, 1921. My independent recollection as to the date the report was submitted is that it was submitted during the latter part of April, 1922.

Q. Do you know whether this report, Defendant's Exhibit D, was prepared in connection with the bond issue which was about to be placed by the Struthers Furnace Company, or proposed to be placed by the Struthers Furnace Company upon its fixed assets? A. I would take it that it would be because it is the practice to do those things in connection with bond issues.

Q. To make such statements? A. Yes, sir.

Q. You do not personally know, I take it, whether this report was furnished to A. B. Leach and Company, or a copy of it? A. Our delivery I believe would be made to the Struthers Furnace Company.

Q. And by them to whomever they wanted? A. Yes, sir.

Q. Now, your company, Ernst and Ernst, prepared the audit as of December 31, 1921, for the Struthers Furnace Company, did they not? A. They did.

Q. Defendant's Exhibit C, which I show you, is a copy of that audit, is it not? (Handing to witness) A. I would say that it is.

Q. Did Ernst and Ernst subsequently prepare a balance sheet based upon the balance sheet contained in the audit, Defendant's Exhibit C, but giving effect to the financing resulting from the sale of a $1,500,000.00 of bonds and to the appraisals of the fixed assets made by Brassert and Lyon? A. We prepared such balance sheet based upon the December 31, 1921, balance sheet, but did not attach our signature to it.

Q. In other words, it was the December 31st balance sheet giving effect, however, to these two elements which I have mentioned? A. Yes, sir.

Q. The bond issue sale of a million and a half of bonds and the appraisal figures contained in the appraisals of Freyn-Brassert and Company and Mr. Lyon who appraised the real estate? A. Those items were given effect in that statement.

Q. Will you look at the statement which has been marked Defendant's Exhibit G, and say whether or not that is a copy of such statement as was prepared by Ernst and Ernst in the manner you have described? A. If I may compare this with my copy so I can tell better. (Referring to papers) This is in effect a copy. I have seen some change in wording which is apparently not material, but the amounts—

Q. The figures are correct? A. They are practically the same. I notice one place where there is more detail given than in our balance sheet, but the total figures are the same.

Q. Will you state to the court why this statement which is headed "Consolidated balance sheet" was not signed by Ernst and Ernst? A. Because the firm would then be placed in the position of having certified to facts which had not yet taken place. The financing was simply proposed and had not yet been consummated when this balance sheet had been prepared, and it is our usual practice to simply assist a company or brokers or investment bankers to prepare their figures giving effect to what would be the picture after the financing was accomplished.

Q. In other words, this consolidated balance sheet was prepared before the bonds had been actually sold? A. Yes.

Q. The deal had not been actually consummated? A. That would be probably true.

Q. And it would be for that reason you would not certify to it? A. Yes.

The Court: Do you feel you would assume any responsibility for the values arrived at by the new appraisal?

The Witness: No, we make no effort to pose or take the position of appraisers of permanent assets of any kind.

The Court: You indicate in your statement who is responsible for it?

The Witness: Yes.

The Court: It is what you find on the books or what you find the appraisals to be.

The Witness: Based on appraisals furnished us.

I do not know Mr. Brassert who made the appraisal. I was not acquainted with him and I do not know his reputation in the business.

Thereupon, Defendant's Exhibit G was offered and received in evidence, said exhibit being as follows:

DEFENDANT'S EXHIBIT NO. G.

Balance Sheet as of December 31, 1921.

CONSOLIDATED BALANCE SHEET
THE STRUTHERS FURNACE COMPANY—CLEVELAND AND SUBSIDIARY.

Condensed and adjusted to show effect of new financing based upon certified Balance Sheet prepared by Messrs. Ernst & Ernst as of December 31st, 1921, and the appraisals by Messrs. Freyn, Brassert & Company and Arthur M. Lyon, Esq.

ASSETS

Current		
Cash		$ 66,470.99
U. S. Govt. Securities		55,122.90
Accounts Receivable		41,742.43
Inventories:		
Ore—on basis of 1921 season ore prices	$1,112,196.61	
Pig Iron, other raw materials and supplies at lower of cost or approximate market value	292,365.49	
		1,404,562.10
Life Insurance—Cash Surrender Value		29,350.00
		$1,597,248.42

Other Assets			
Personal and Miscellaneous Accounts, etc....			168,811.70
Undivided One-Half Interest in Ore Mines (Mortgaged under this Bond Issue)			
One-half the independently appraised value of Wade-Helmer Ore Mines.....			710,000.00
Permanent			
The Struthers Furnace Company			
Real Estate as appraised by Arthur M. Lyon	$ 484,590.00		
Plant, Equipment, Rolling Stock, etc., at present day sound values based on appraisal by Freyn, Brassert & Company...	1,852,000.00		
		$2,336,590.00	
Subsidiary Company			
(Property not appraised)			
Surface Lands and depreciated book value of plant, equipment, etc.		21,272.99	
			2,357,862.99
Deferred			
Prepaid Interest, Taxes, Insurance, Discount on Securities, etc.			238,221.40
			$5,072,144.51

LIABILITIES

Current			
Accounts Payable		$ 15,095.66	
Accrued Accounts		39,929.37	
			$ 55,025.03
First Mortgage Sinking Fund 8% Gold Bonds			
(This Issue)			1,500,000.00
Reserves			145,352.36
Nominal			
Capital Stock			
Preferred—7% Cumulative Authorized and Issued	$1,250,000.00		
Less: In Treasury	300,000.00		
	$ 950,000.00		
Common			
Authorized and Issued	1,000,000.00		
		$1,950,000.00	
Surplus			
Including appreciation		1,421,767.12	
			3,371,767.12
			$5,072,144.51

Compiled by Ernst & Ernst.

CROSS-EXAMINATION by Mr. Henderson.

The balance sheet was made up late in April, 1922. I doubt whether there would be any date on Plaintiff's

Exhibit G showing when the balance sheet was made up. My time reports at the office would show that. I haven't anything with me now that would.

Thereupon, the defendant called as its witness C. B. CAMPBELL, who, being first duly sworn, testified on DIRECT EXAMINATION by Mr. Johnston as follows:

My name is C. B. Campbell. I live at South Orange, New Jersey, and am a Vice President of A. B. Leach and Company of 62 Cedar Street, New York City. I have been a Vice-President of A. B. Leach and Company since 1917. I recall several conferences which I had in the office of A. B. Leach and Company with Mr. Runyon, his son and Mr. Zwetsch during the spring of 1922. I heard the testimony of Mr. Runyon this morning with respect to conversations he had in New York with me and others.

Q. Will you state to the Court what if anything was said at any of those conferences in New York between yourself and Mr. Runyon, or Mr. Runyon and his son, if his son accompanied him, concerning the waiver by A. B. Leach and Company with respect to its ownership of preferred stock of the bond issue, that is, the waiver permitting a bond issue to go ahead of the preferred stock? A. We agreed to vote our stock naturally; that is the assumption, that we vote our stock; we held approximately three thousand shares of stock which was about twenty-two per cent of the stock outstanding.

Q. Was there anything said by you or anyone else representing A. B. Leach and Company in those conferences to the effect that you would not consent to a bond issue as a preferred stockholder unless that bond issue was placed through Leach and Company? A. I should think not; I don't remember any such conversation.

Q. In other words, what I am getting at, Mr. Campbell, is did you or anyone representing Leach and Company threaten in any way to withhold consent? A. No.

Q. Or use the fact that you were a preferred stockholder for that purpose? A. Not in my presence.

Q. Did you ever hear of any such thing by Leach and Company? A. No.

Q. Now, do you recall whether Leach and Company, through you or through the other gentlemen who were handling the transaction, requested from the Struthers

Furnace Company a statement by Ernst and Ernst of the earnings of the Struthers Furnace Company from 1911 to 1921? A. I believe we asked them for a ten year statement of earnings.

Q. And did you subsequently receive this statement, Exhibit D? (Handing to witness) A. Yes, we received that statement.

Mr. Johnston: I now offer Exhibit D in evidence.

Thereupon the paper last above referred to, marked Defendant's Exhibit D, was received in evidence, and is as follows:

DEFENDANT'S EXHIBIT NO. D.

EARNINGS, EXPENSES AND SURPLUS ACCOUNT

THE STRUTHERS FURNACE COMPANY CLEVELAND

FOR THE PERIOD FROM MAY 1ST, 1911 TO DECEMBER 31ST, 1921

REPORT FROM

ERNST & ERNST

AUDITS AND SYSTEMS

CABLE ADDRESS "ERNSTAUDIT" NEW YORK

NEW YORK
PHILADELPHIA
BOSTON
PROVIDENCE
WASHINGTON
RICHMOND
BUFFALO
PITTSBURGH
CLEVELAND
CINCINNATI
TOLEDO
DETROIT

ERNST & ERNST

AUDITS AND SYSTEMS

TAX SERVICE

CLEVELAND
HANNA BLDG.

CHICAGO
MINNEAPOLIS
ST. PAUL
INDIANAPOLIS
DENVER
ST. LOUIS
KANSAS CITY
NEW ORLEANS
ATLANTA
DALLAS
FT. WORTH
HOUSTON

April 28th, 1921.

Mr. W. C. Runyon,
President, The Struthers Furnace Company,
Cleveland.

Dear Sir:-

As requested we have compiled from our Audit Reports previously rendered for THE STRUTHERS FURNACE COMPANY - CLEVELAND, covering the period from May 1st, 1911 to December 31st, 1921, inclusive, and submit herewith Summary of Earnings, Expenses and Surplus Account for the period named.

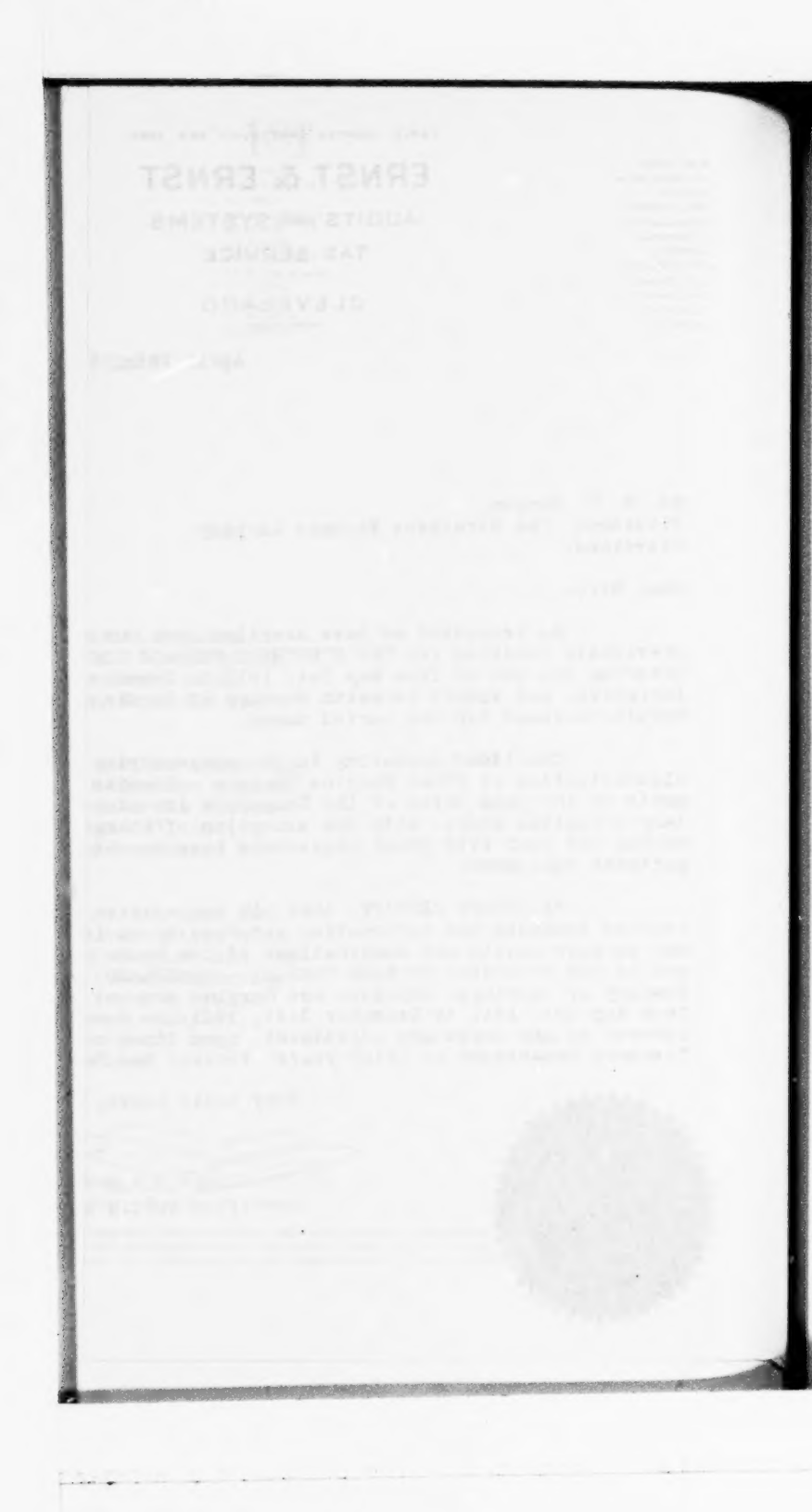
The items appearing in the accompanying exhibit under the classification of Other Surplus Charges - Credits represent adjustments of the book value of the Company's investment in its Subsidiary's Capital Stock, with the exception of charge of $75,000.00 during the year 1918 which represents Loss on obsolete Cement Department Equipment.

WE HEREBY CERTIFY, that, in our opinion, based upon the records examined and information obtained by us in connection with our various audits and examinations of the books of account and record of THE STRUTHERS FURNACE COMPANY - CLEVELAND, the accompanying Summary of Earnings, Expenses and Surplus Account for the period from May 1st, 1911 to December 31st, 1921, is correct, subject, however to any necessary adjustment, upon final review by the Treasury Department of prior years' Federal Tax Returns.

Very truly yours,

Ernst & Ernst

Certified Public Accountants



EARNINGS, EXPENSES AND SURPLUS ACCOUNT

THE STRUTHERS FURNACE COMPANY
CLEVELAND

For the Period from May 1st, 1911 to
December 31st, 1921

Printer's Note:

The figures on this Exhibit tabulation which are underscored with a rough pen line were typed in red on the Original Report.

EARNINGS, EXPENSES AND SURPLUS ACCOUNT

THE STRUTHERS FURNACE COMPANY - CLEVELAND

For the period from May 1st, 1911 to December 31st, 1921.

FOR PERIOD ENDED	SALES NET	COST OF SALES	GROSS PROFIT	SELLING, GENERAL AND ADMINISTRATIVE EXPENSE	OPERATING PROFIT-LOSS	OTHER A D DEPRECIATION	OTHER A D AP INTEREST NET	
Apr. 30-1911					14,082.92	$ -o-	$ 36,569.34	$
Apr. 30-1912 (year)	$ 1,788,193.27	$ 1,722,720.90	$ 65,472.37	$ 51,389.45	15,924.27	-o-	34,907.78	
Apr. 30-1913 (year)	1,393,873.59	1,359,406.71	34,466.88	50,391.15	41,015.68	-o-	39,294.29	
Apr. 30-1914 (year)	2,004,033.58	1,911,260.62	92,772.96	51,757.28	32,709.20	-o-	29,436.27	
Apr. 30-1915 (year)	1,523,257.86	1,500,094.70	23,163.16	55,872.36	119,973.15	-o-	27,263.46	
Apr. 30-1916 (year)	1,975,441.22	1,796,944.63	178,496.59	58,523.44	373,116.06	-o-	43,718.27	
Apr. 30-1917 (year)	2,905,893.22	2,502,778.65	403,114.57	69,998.51	519,219.32	47,262.39	18,460.76	
Dec. 31-1917 (8 mos.)	3,593,410.65	2,984,326.31	609,084.34	89,865.02	1,371,263.30	80,701.10	9,499.46	
Dec. 31-1918 (year)	5,922,966.07	4,428,722.82	1,494,243.25	122,979.95	285,486.06	100,634.00	29,730.45	
Dec. 31-1919 (year)	3,011,933.93	2,551,638.65	460,295.28	174,809.22	392,457.83	124,875.89	34,356.64	
Dec. 31-1920 (year)	4,221,750.81	3,564,919.31	656,831.50	264,373.67	136,267.03	30,359.89	87,412.17	
Dec. 31-1921 (year)	804,071.41	755,388.57	48,682.84	184,949.87				
	$29,144,825.61	$25,078,201.87	$4,066,623.74	$1,174,909.92	$2,891,713.82	$ 383,833.27	$ 390,550.89	$

OTHER ADDITIONS & DEDUCTIONS								SURPLUS	
INTEREST NET	DEPRECIATION APPRECIATION OF INVENTORY	OTHER ADDITIONS DEDUCTIONS NET	SPECIAL ADDITIONS DEDUCTIONS	PROVISION FOR FEDERAL TAXES AND CONTINGENCIES	NET PROFIT-LOSS	OTHER SURPLUS CHARGES CREDITS	DIVIDENDS PAID	INCREASE DECREASE FOR PERIOD	BALANCE END OF PERIOD
									$ 577,344.82
$ 36,569.34	-o-	$ 32,704.95	$ 117,127.45		$ 61,936.08	$ 74,305.11	$ 368,200.00	$ 231,858.81	345,365.78
34,907.78	37,084.80	6,664.88	75,550.90		5,237.87	30,878.02	-o-	25,640.15	319,745.60
39,294.29	19,910.54	8,105.77	-o-		26,294.92	13,302.99	-o-	39,597.91	280,147.69
29,436.27	-o-	11,279.01	16,442.00		56,984.48	57,818.51	-o-	114,802.99	165,644.70
27,263.46	42,153.78	40,959.40	-o-		93,904.07	20,263.88	-o-	73,640.49	239,285.19
43,718.27	-o-	4,658.98	42,859.49	$ 34,559.55	207,319.77	-o-	37,500.00	169,819.77	409,104.96
18,460.76	87,587.28	11,338.95	-o-	212,313.00	317,431.50	-o-	330,000.00	12,568.50	396,536.46
9,499.46	-o-	46,493.79	138,522.72	800,000.00	296,046.23	75,000.00	255,000.00	33,953.77	362,582.69
29,730.45	-o-	43,723.99	-o-	15,000.00	96,397.62	287,953.33	140,233.33	214,117.62	576,700.31
34,356.64	-o-	4,422.46	-o-	30,000.00	207,647.76	19,779.06	209,051.36	19,183.84	557,517.65
87,413.17	82,265.85	19,697.07	-o-	-o-	356,002.01	31,765.11	87,500.00	475,267.12	82,250.53
$ 390,550.89	$ 64,649.47	$ 221,204.33	$ 22,262.76	$1,091,872.55	$ 846,639.49	$ 53,751.17	$1,425,484.69	$ 495,094.03	$ 82,250.53

Q. Mr. Campbell, did you also receive from the Struthers Furnace Company the documents which I now show you, or the originals thereof, namely, an audit prepared by Ernst and Ernst of the affairs of the Struthers Furnace Company, as of December 31, 1921, Defendant's Exhibit C; appraisal of Arthur M. Lyon and Company, Defendant's Exhibit A; appraisal by Brassert, Defendant's Exhibit B, 1 to 5, inclusive, and appraisal of H. A. Brassert contained in the letter under date of March 30, 1922, Defendant's Exhibit F? A. We received Exhibit C. As to these other Exhibits, I can only say that I presume we received them; they would not necessarily come under my jurisdiction. That would be handled by the man who had in charge the collecting of the information and the putting it together in the proper form. It necessarily would not come across my desk.

Q. I will say, Mr. Campbell, that these original appraisals were received from the New York office of A. B. Leach and Company. A. That might be, but it would not necessarily go across my desk.

Q. Did you pass upon the question before A. B. Leach and Company exercised its option to purchase this $1,500,000.00 of bonds, as to whether or not the requirements of the contract with respect to appraisals and audits, and so forth, had been furnished to Leach? A. I did.

Q. And what did you find? A. I found that the necessary papers substantiating figures given in our circular, and so forth, as terms of the contract were complied with.

Q. Now, I will ask you whether or not, as vice-president of Leach & Company, in accepting this option, electing to exercise this option and in making the contracts of purchase, A. B. Leach and Company relied upon the appraisals and audits furnished by the Struthers Furnace Company in accordance with the contract? A. Absolutely.

Q. Did A. B. Leach and Company, outside of the figures furnished by the Struthers Furnace Company through these expert accountants and expert appraisers, have any independent knowledge of the financial affairs of the company or of the value of its assets? A. Well, we had financed the company before on an issue of the preferred stock, and naturally we were familiar with the company's affairs to some extent, how closely it is hard

for me to say, because that is a department by itself which keeps track of those matters.

The Court: That financing of the preferred stock had taken place, I believe, in 1919?

The Witness: I don't remember the date, Your Honor, but it was some years prior.

The Court: It was several years prior to this?

The Witness: Yes.

Q. But in any event, in 1922 when you entered into the contract to purchase, I take it you relied upon the statements that were furnished you by the Struthers Furnace Company as the basis for the contract? A. We made an entirely new examination and relied upon the information that we got in the examination as to whether or not we would go ahead with the bond issue.

Q. And by examination you mean examination of the audits and appraisals? A. Through independent appraisals and through independent audits.

Q. Now, do you know, Mr. Campbell, whether in purchasing these bonds A. B. Leach and Company paid accrued interest on the bonds at the bond rate of eight per cent from May 1, 1922, to the date of delivery of the bonds? A. Yes, sir, that was the usual form of buying bonds, the interest up to the date of delivery.

Q. How many years have you been in the business of selling securities? A. Nineteen years.

Q. And are you familiar with the general uses, practices and customs in the security business, the selling of securities? A. I think so.

Q. I will ask you whether or not there is any general practice in the selling of preferred stocks as to whether they are sold with accrued dividends, using that as a technical term? A. I would say that it might be a little bit in favor of selling stocks and accrued dividends. I mean by that that more often stocks are sold, preferred stocks are sold and accrued dividends than are sold flat.

Q. Just what is meant by the term, technical term so much and accrued dividends? A. It means the accrual of dividend from the last dividend period payment up to the date that it is purchased.

Q. Was the preferred stock of the Struthers Furnace Company which was sold through your firm in 1919 accumulative preferred? A. Accumulative preferred stock.

Mr. Johnston: Gentlemen, is there any question about the fact that Leach and Company at the time of these transactions owned the three thousand shares and that they stood in their name?

The Court: No, I don't understand that there is.

Mr. Henderson: It is admitted in the pleading.

Mr. Johnston: Let the record show that at the time of these transactions and at the time the stock was turned in for transfer in accordance with this contract of April 19, 1922, three thousand shares of the preferred stock of the Struthers Furnace Company was owned by A. B. Leach and Company and stood upon the transfer books in the name of A. B. Leach and Company.

Cross-Examination by Mr. Henderson.

I was with the defendant, A. B. Leach and Company, in 1919 when the company underwrote the preferred stock issue. I am not familiar with the various provisions of the Articles of Incorporation with reference to the issue of that preferred stock. I personally did not handle that issue. I was not familiar with the provisions appearing on the face of the preferred stock certificate itself. I did not have possession of that stock certificate. I think those stock certificates evidencing these 3000 shares of preferred stock were in Cleveland office of the company. I had nothing to do with the making of the application to the Department of Commerce in the Division of Securities for the exemption of these bonds in the State of Ohio. That was handled by another department, possibly through the Cleveland office. Possibly the information was taken from our records in New York or from the information we had in the New York office, but not through me. That would be done by a clerk in our office. I might sign the application, but I might not necessarily know what was in it. That would be handled by someone else.

Q. You knew in May of 1922, didn't you, when these bonds were purchased or agreed to be purchased from the Struthers Furnace Company, that they in February of that same year had been obliged to borrow money from A. B. Leach and Company to pay the dividends that had accrued in February, February 1st of that year? A. I presume that is so, but that is the usual occurrence.

Q. I am asking you if you knew of that fact? A. I can't say that I remember it, no. That might be.

Q. Do you remember as to whether or not you knew the fact that they were obliged to borrow money in order to pay the dividend which accrued in May of 1922? A. Well, if I did know it it didn't mean anything because that is quite a common occurrence.

Q. Well, do you recall it? A. No, I don't recall it. I didn't recall it until I heard it come out in the testimony this morning.

Q. At any rate, you did talk with Mr. Runyon in New York concerning the fact that if you were given the option to purchase these bonds on the terms and provisions that the option specified, that you would give them your consent to authorize the issuance of these bonds to the extent of your three thousand shares? A. Well, waiver, whatever it was that was necessary.

Q. And that was done, as a matter of fact, wasn't it, your agreeing to give your consent to the bond issue was done in consideration of their giving you their option to purchase these bonds, wasn't it? A. No.

Q. Do you remember having received the original of a letter marked Plaintiff's Exhibit 9 from the vice-president of the Struthers Furnace Company to A. B. Leach and Company, or did that come to your attention in your New York office? I see it is addressed to Guardian Building in Cleveland. Do you know if the original of that letter came to your office? A. No, I haven't any idea. I don't remember the letter.

Q. Did these papers come to the New York office at all, that is, the option, the granting to A. B. Leach and Company of the right to purchase these bonds, did that come to your office in New York at all? A. I don't know whether that contract was signed in New York or whether it was signed by Mr. Zwetsch in Cleveland.

Q. Do you remember anything about having seen it? A. Well, I have seen copies of it. Whether I saw the original or not, I don't remember.

Q. As a matter of fact, Mr. Campbell, would you have consented to the issuance of these bonds at all if it had not been for the fact that you were to be given in that option the right to exchange the preferred stock that you owned as part payment for the bonds? A. I don't see why we shouldn't.

Q. Would you? Is it your idea now you would have, that is, you would have consented to a bond issue to be secured by mortgage on the property and therefore to be ahead of the preferred stock that you then owned? A. I think we felt very strongly it was the proper thing for the company to do to raise this money on a long term bond issue rather than to leave the company in debt to banks that might be called at any time; with money conditions as they were at the time. The decision was to clean up the situation, take the loans away from the banks and give the company working capital, which in many instances is the proper thing for a company to do.

Q. And you say then you would have done it if, however, you had not been given the opportunity to trade in your preferred stock as part payment on these bonds? A. I can best answer that by saying we have done it in the past.

Q. I say, is it your idea now you would have done it in this instance? A. That is rather a hard question to answer. You are asking me to go back four years. It is quite a long time.

Thereupon the defendant called as its witness HORACE C. ZWETSCH, who being duly sworn testified on DIRECT EXAMINATION by Mr. Johnston as follows:

I have heretofore testified in this case in behalf of the complainant. In 1921 and 1922 I was Vice-President in charge of the office of A. B. Leach and Company, Cleveland. During the years 1921 and 1922 the preferred stock of the Struthers Furnace Company was being sold through the Cleveland office of A. B. Leach and Company. I knew of those sales because they came under my direction and charge. I was familiar with the prevailing market price or value of the preferred stock of the Struthers Furnace Company during the period from January 1, 1922, up to and including the month of May, 1922. I was familiar with the market value of that preferred stock because every day I was trading in stocks and bonds in the Ohio market.

Q. What was the market value of the Struthers Furnace Company preferred during the month of May, 1922? A. Eighty-seven and a half.

Q. Eighty-seven and a half? A. Yes, sir.

Q. And how is that value arrived at, from what source? A. By sales confirmed and paid for.

Q. Through the office of A. B. Leach and Company? A. Yes, sir.

Q. To customers of that company? A. Yes, sir.

The Court: Was it a listed stock?

The Witness: No, sir.

The Court: Not listed on the Cleveland Stock Exchange?

The Witness: No, sir.

The Court: There was no activity in the stock during that period?

The Witness: Not outside of the activities in unlisted stocks.

The Court: Not outside of the applications to and sales made by A. B. Leach and Company on unlisted stock?

The Witness: Yes, sir.

Q. Were other brokerage houses selling the stock? A. There had been, there were something like sixteen or eighteen brokers in the original account. Of course, I had no means of keeping track of their trade.

The Court: Whether they were still trading or not, you don't know?

The Witness: I don't know.

Q. Now Mr. Zwetsch, there has been introduced in evidence here a letter written by the Chicago office of A. B. Leach and Company, May 2, 1922, by Mr. Hanford, marked Plaintiff's Exhibit 10. Will you look at that letter? (Handing to witness) A. Yes, sir.

Q. Are you familiar with the circumstances which prompted the writing of that letter? A. I am.

Q. Is Mr. Hanford now alive? A. No, I understand he is dead.

Q. Will you state what the circumstances are in connection with the writing of that letter, to your knowledge? A. I was in Chicago for the purpose of getting the consent of the "blue sky" commission to sell Struthers bonds in Illinois, and Mr. Hanford had charge of it. Consulting his attorneys, whom I think were Chapman and Parker, we found it was necessary to get an engineer's report. I called up Mr. Brassert and stated the circumstances, and he said if Mr. Hanford would come

up he would give him such a report. I assume that he did, although I left Chicago that night.

Q. Was anything said as to whether that would be a copy of the appraisal or report that he had heretofore discussed? A. I assume from my conversation it would be in keeping with it.

Q. That was all there was to that transaction? A. Yes, sir.

Q. Were you present in the New York office of A. B. Leach and Company on the occasion which Mr. Runyon testified to, or at least one of the occasions when he testified to having a conference with Mr. Campbell and others regarding this proposed bond issue? A. Yes, I have been there several times.

Q. Will you state what if anything was said at any of those conferences regarding the waiver by Leach and Company as to the three thousand shares of preferred stock which they held in the event that a bond issue was to be placed on the property? A. I don't remember that subject was ever mentioned. The primary question there was whether we would get a bond issue at all or not.

Q. You had numerous negotiations in Cleveland with Mr. Runyon, did you not? A. Yes.

Q. At any time was it ever stated by anyone in your presence representing Leach and Company to Mr. Runyon or any other representative of the Struthers Furnace Company, that Leach and Company would not sign such a waiver unless a contract was made for the sale of bonds to them and the exchange of their preferred stock? A. Never, in my presence, or any suggestion of it.

Q. Never was made? A. Never.

Q. How long had you been engaged in the sale of securities in 1922? A. About eighteen or twenty years.

Q. And were you familiar with the customs and practices relating to the sale of securities, the common terms used? A. I think I am.

Q. And what is meant by the sale of preferred stock so much with accrued dividends? A. It means the dividends from the last paid dividend.

Q. What can you say as to the general custom and practice in the investment and stock and bond business

with respect to the sale of preferred stocks on those terms, namely, at a given price with accrued dividends? A. Why, I think it is safe to say seventy-five per cent are always sold with accrued dividend. Once in a while of course, a few days after the dividends are due, in order to put a sale through, the salesman can allow that dividend, but almost universally, since the stock exchange changed its rule about five or six years ago, or ten years ago, perhaps, making all transactions in bonds payable with interest, the tendency has been to charge interest on both stocks and bonds where there was an interest rate.

Q. You were the representative of Leach and Company on the ground here at Cleveland? A. Yes, sir.

Q. Did you know in May, the month of May, 1922, or have any information that the Struthers Furnace Company would not pay dividends upon the next dividend day? A. No, sir.

Cross-Examination by Mr. Wilson.

Q. After the contract had been entered into between Leach and Company and the Struthers Furnace Company, giving Leach and Company the right to exchange its preferred stock for bonds which were to be issued, Leach and Company became quite active in endeavoring to obtain an appraisement upon which to base a bond issue, did it not? A. I wouldn't say so, no, sir.

Q. So that on May 1st, you received a copy of the appraisal of the company's real estate at Struthers, and you replied on May 2nd, that you had also—"pleased to advise you that Brassert has agreed to furnish us with an appraisal of $1,856,170.00 covering lands, buildings and permanent improvements"? A. Yes, sir.

Q. You had already, before the bonds had been issued at all, succeeded in getting from Brassert a statement to Leach and Company that he would put for you an appraisement of $1,856,000.00 on that land, didn't you? A. That was not for the purpose of a bond issue at all, as I told you.

Q. To enable you to sell bonds that had not yet been authorized, was it not? A. We had to authorize them before we sold them, didn't we?

Q. Yes, sir, but you had taken time by the forelock and were getting ready to sell the bonds that had not

yet been issued and could not be issued without your vote, had you not? A. I don't know about that, sir.

Q. You knew it couldn't have been issued without your three thousand shares? A. I don't know when we turned the stock over.

Q. You didn't turn the stock over until you got the bonds, certainly, did you? A. The whole thing was in the hands of our attorney.

Q. Well, you didn't turn your stock over for bonds until you got your bonds? A. Oh, no.

Q. And you didn't get your bonds until they had been authorized? A. Probably not.

The Court: As I understood Mr. Zwetsch's reference to that Brassert valuation of a million eight hundred thousand, that was given to you in connection with the permission in Illinois to sell Struthers bonds in that market?

The Witness: Yes.

Q. That was to enable you to comply with the law of Illinois to sell the bonds in Illinois after they were issued and after you got them? A. That is as I understood it, yes, sir.

The Court: Who is Brassert?

The Witness: Brassert is one of the outstanding appraisal engineers in the United States in this class of work and has been for two generations.

The Court: Where is his office?

The Witness: In Chicago. I think he is in the Peoples Gas Building at the present time. He used to be. He is the man who recently made this report on the Rhine-Elbe, Germany, for this large federation loan.

The Court: Had he been making appraisals for A. B. Leach and Company in connection with bond issues, and stock issues at that time or prior thereto?

The Witness: I don't recall that he ever did.

Mr. Johnston: Has he specialized in this field, in the field of furnaces?

The Witness: Yes.

Q. It has been shown in evidence here that Leach and Company elected to exercise its option to turn in its preferred stock for bonds. A. Yes, sir.

Q. On May 23, 1922. Two weeks before that time Leach and Company were advertising these bonds for

sale, were they not, in the Cleveland Plain Dealer? A. I couldn't tell you, sir.

Q. Weren't you the vice-president of the company? A. Yes, sir.

Q. Weren't you located in Cleveland? A. Yes, sir.

Q. Didn't you get out that advertisement published May 9th, in the Plain Dealer in Cleveland? A. I never got out an advertisement from this office.

Q. Where was it gotten out? A. By our advertising agents in New York.

Q. You will not deny this ad was inserted then by your advertising agents in the Cleveland Plain Dealer, May 9th, about nearly two weeks before you had elected to take the bonds at all? A. I don't know, sir; I haven't the least idea.

Q. Well, that is your advertisement, isn't it? (Handing to witness) A. It purports to be, yes.

Q. Would you think there is any doubt about it?

The Court: Well, he hasn't any more information about it from his testimony than you have, Mr. Wilson, or the Court has.

Q. You had some conversation with Mr. Runyon with reference to this bond issue? A. I had several.

Q. There were two things which you and Runyon were talking about, you representing Leach and Company and Runyon representing the Struthers Furnace Company, as I take it. The one is the contemplated bond issue and the terms of it; the other the contract with Leach and Company to purchase the bonds. Those two things, were they not? A. Well, that wasn't all, certainly.

Q. Well, those two matters were taken up? A. Yes.

Q. And they were taken up together, were they not? A. What do you mean by taken up together?

Q. I mean the two subjects were talked over between you and Runyon at the same time? A. The subject of buying bonds and what?

Q. And the subject of whether they would have any bonds? A. Yes, I guess so.

Q. Leach and Company and the Struthers Furnace Company were endeavoring to get together upon a bond purchasing contract with Leach and Company? A.

Well, we discussed it several times, if that is what you mean.

Q. You discussed the desirability of a bond issue and also the question of your becoming interested as purchasers of the bonds if they were issued? A. Yes, sir.

Q. You were stockholders to the extent of 3014 shares? A. Yes, sir.

Q. You were willing to purchase these bonds—when I say you I mean Leach and Company—you were willing to purchase these bonds if you were given the option to pay for part of the bonds in your preferred stock? A. Well, that is a contract we made, it seems.

Q. Well, you were not willing to purchase the bonds unless you could purchase them with preferred stock and cash? A. That is not so, sir.

Q. Well, that was the contract you made? A. That is the contract we made, sir.

Q. And that was the contract you insisted on,—Leach and Company? A. It was not.

Q. That was the contract you proposed? A. It doesn't make any difference; we didn't insist on it, sir. It is the contract we finally made.

Q. You mean you would have agreed on better terms? A. I don't know, sir, anything about that, what we would or would not have agreed upon.

Q. Well, the terms you agreed upon— A. Were those embodied in the contract.

Q. In other words, that you should have the privilege, if you bought the bond issue, of exchanging part of it for preferred stock? A. Yes.

Q. You had your 3014 shares which, in order to effect the bond issue, you would have to vote in the affirmative? A. Two thirds of the preferred stock would have to vote for it.

Q. Three-fourths, sir. A. Three-fourths.

Q. And that three-fourths would have to include your three thousand shares? A. I think we held something like twenty-two per cent.

Q. So that when your company received the letter enclosing the duplicate option signed by the Struthers Furnace Company returning them to you for your sig-

nature, you knew what they meant by saying "This is sent to you with the understanding that we receive from you the three thousand shares"? Your consent, I mean, to vote these three thousand shares? A. I just told the Court just what this situation was.

Q. I would like to have an answer to that in your own way.

The Court: I don't believe in argumentative, hair splitting questions. Tell me what you want to say.

The Witness: Mr. George Coulton, of the Union Trust Company, was a director of the Struthers Furnace Company, and he called me over one day and he said, "We better get this thing through. The Struthers Furnace Company owes the bank a lot of money here, and we have got to have it to put a bond issue out—

The Court: How was he interested in it?

The Witness: He was interested in the Struthers Furnace Company.

The Court: But he was also at the bank?

The Witness: Yes. And I went to Mr. Ginn, of Tolles, Hogsett, Ginn and Morley, our attorneys, and I said, "Before the deal is worked out I want you to take it and work it out." So when this contract was made we turned it over to him to prepare every paper. An arrangement was made with the Guardian for carrying the bonds. That was all there was to the transaction.

Q. So I say, when you received this letter of April 15, enclosing the duplicate of the contract, option contract, requesting your signature, you knew what they meant by saying—"The aforesaid mentioned papers are handed to you with the understanding that we shall receive from you the consent and proxy covering the preferred stock"? A. I don't know whether I did or not. We had a contract, as I understood it, and was following that.

Q. Well, pursuant to this letter you did sign the option and you did return them the stock? A. I turned it over to Mr. Ginn.

Q. Well, their attorney? A. Yes, sir, our attorney also.

Q. You were familiar, were you, with the resolutions—I don't know whether you were individually familiar—the resolutions by which this preferred stock was originally issued? A. I don't think so, Mr. Wilson.

Q. You were familiar with the conditions written on the face of the preferred stock, weren't you? A. I may have read it; I don't know whether I had or not.

Q. You don't know under what conditions the company was authorized— A. I couldn't tell you now; there are so many of those transactions.

Mr. Wilson: That's all.

Mr. Johnston: At what price did Leach and Company buy this preferred stock originally from the Struthers Furnace Company?

The Witness: Ninety-two or ninety-two and a half. I can't tell you which one.

Whereupon, both the plaintiff and the defendant rested. The evidence was closed and the cause was submitted to and taken under advisement by the Court.

PLAINTIFF'S EXHIBIT NO. 17.

Letter, dated Dec. 5, 1921, Zintsch to Runyon.

A. B. Leach & Co., Inc.

Guardian Trust Bldg.,
Cleveland, Ohio,
December 5, 1921.

Mr. Walter C. Runyon, Jr., Vice-President,
The Struthers Furnace Company,
Citizens Bldg.,
Cleveland, Ohio.

My dear Mr. Runyon:

I understand that you now have Ernst & Ernst, Auditors, at work on your books. I think it is imperative in view of the general situation, that you get a preliminary report from them by the 15th of this month if you possibly can. After the first of the year, they could bring the report down to and including the 31st of December, 1921. These are times when people are not astounded by losses and unfavorable statements, but they do insist on knowing just how things stand.

Such a report would be of great assistance to us in answering questions from the holders of your stock, as well as those from prospective investors. I believe this

would have a very strong supporting influence on this market.

Trusting you can furnish us with such a report, I am, with best respects,

Yours very truly,

(Signed) H. C. ZINTSCH,
Vice President.

HCZ:*

STIPULATION.

It is HEREBY STIPULATED, by and between the parties to the above entitled cause, by their respective Solicitors of record, as follows:

1. That the foregoing statement of the evidence and the attached form of certificate to be signed by the Judge of the above entitled Court prepared by the above named Defendant, pursuant to Equity Rule No. 75, have been submitted to and examined by the above named Plaintiff, and his Solicitors.

2. That said statement is true, complete and properly prepared and that the Judge of said Court may approve the same and sign the attached certificate upon presentation of said statement and certificate to said Judge, the said Plaintiff waiving lodgment of the same in the Clerk's Office for examination by said Plaintiff, notice of the lodgment thereof, as well as notice of the time and place when the said defendant will ask the Court or Judge to approve the said statement.

3. That the Court may, without further notice, enter an Order directing that so much of the testimony as has been reproduced in the exact words of the witnesses in the foregoing statement prepared by the defendant, with the consent of the Plaintiff, be reproduced in the exact words of the witnesses.

4. That the foregoing matters and things have been agreed to in order to expedite the Appeal of the above named Defendant from the final Decree entered in the above entitled cause on March 18, 1926, and it is further agreed that the statement, when certified by the Court, shall be filed in the Clerk's Office and become a part of the record in said cause for the purposes of the Defendant's said Appeal, to the same extent as it would have become a part of the record if all the provisions of

Equity Rules No. 75 and No. 76 had been literally complied with.

Dated this 19th day of April, A. D. 1926.

J. P. WILSON and
A. M. HENDERSON,
of WILSON, HAHN, HENDERSON & WILSON,
Solicitors for Plaintiff.

DAY & DAY,
NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
Solicitors for Defendant.

Be it further remembered that the foregoing was all the evidence and testimony offered, admitted or excluded and all the proceedings had on the hearing of said cause which do not already appear of record, herein.

Be it further remembered and certified that the foregoing stipulation was signed by the respective Solicitors for Plaintiff and the Defendant, for the purposes therein expressed; and it appearing that the said statement is true, complete and properly prepared, it is hereby approved, settled and allowed as a true, complete and correct statement in narrative form of the evidence introduced in said cause, with the exception of parts of the testimony of certain witnesses which, by agreement of the parties and the direction of this Court, were reproduced in the exact words of said witnesses.

Inasmuch as the matters above set forth do not fully appear of record in this suit and the defendant prays that the same may be certified under the hand of the Judge of this Court and thereby made a part of the record in said cause, it is accordingly certified this 21st day of April, A. D. 1926.

D. C. WESTENHAVER,
Judge of the District Court of the United States, Northern District of Ohio, Eastern Division.

OPINION

(Filed Mar. 3, 1926.)

WESTENHAVER, *District Judge.*

Plaintiff is the Receiver of the Struthers Furnace Company, an Ohio corporation, duly appointed by the Common Pleas Court of Mahoning County. As such, he possesses all the powers conferred by statute and general principles of equity on a Receiver. On April 15, 1922, this corporation had outstanding $1,000,000 par value common stock, and $1,250,000 par value seven per cent. cumulative preferred stock. This preferred stock had been issued in December, 1919. It had been bought by the defendant, A. B. Leach & Company, and resold and distributed to a large number of persons. A. B. Leach & Company, on April 15, 1922, was the owner of 3014 shares of the par value of $301,400. This preferred stock had no voting power except under certain conditions of default not material to be stated. It was entitled to priority over all common stockholders, both as to dividends and principal. It was provided in the company's charter and in the certificates that the same could be redeemed only from the net surplus profits left at the end of each year after payment of the agreed preferred dividend and all taxes. It was also provided that no mortgage should be placed on the corporation's assets prior to said preferred stock, without the written consent and waiver of the holders of three-fourths thereof.

On May 5, 1922, the corporation executed a mortgage on its fixed assets, securing an issue of negotiable mortgage bonds of the face amount of $1,500,000. The fixed capital was then impaired. Its book surplus at the end of the year 1921 was eighty-two thousand some hundred dollars. Prior to May 1, 1922, its book surplus had been wiped out and a deficit created. The preferred stock dividends due February 1, 1922, were paid by money advanced for that express purpose by defendant. The dividends due May 1 were paid with money borrowed from a bank. This financial condition was at all times well known to defendant. The corporation on and prior to May 1 had become largely indebted to various banks. In March or April, 1922, an officer of one of these creditor banks, who was also a common stockholder and a director of said corporation, urged payment of these bank loans and suggested a bond issue as a means to that end. All steps leading up to the making of this

mortgage and the issue and sale of these bonds, were conducted by the corporation's President and Vice President, with the knowledge and co-operation of defendant's duly authorized representatives. The latter took part in settling the terms and conditions of such issue, in procuring new appraisals of fixed assets, such as would make a favorable basis on which to offer the bonds for sale, and also in procuring waivers or consents of preferred stockholders to the giving of the mortgage. An optional agreement was made between defendant and the corporation for the purchase by the former of these bonds when issued. This agreement, duly reduced to writing, is dated April 5, 1922. It fixes the price at which these bonds were to be sold to defendant as 90 and accrued interest (later modified to 90-1/2) and also permits the defendant to pay for a part thereof by turning in its preferred stock at $85 a share and accrued dividend. This agreement and its terms were made before any action was taken to secure waivers from preferred stockholders, approval of common stockholders, or of the corporation's Board of Directors, or re-appraisal of the corporation's fixed assets.

Preferred stockholders, other than defendant, when giving written waivers, did not know and were not advised of this term of the agreement permitting defendant to take bonds in exchange for its preferred stock. The creditors were likewise ignorant, except as notice may be imputed through membership on the Board of Directors of an officer of one of the bank creditors. No meeting was called or held, of preferred stockholders. Their waivers were solicited through the mail and in writing on written representations that these bonds were to be issued to refund floating debts, add working capital, and for other corporate purposes. Plausible statements were made to justify the transaction and induce the belief that the condition of the company was good and its future prospects were bright. In the written request it is said : "We have discussed the matter with A. B. Leach & Company, Inc. of New York, who sold our preferred stock, and the proposed financing carries with it their unqualified approval." A. B. Leach & Co. participated in circularizing the preferred stockholders and in recommending that the waivers be given. Under date of April 3, it circularized the preferred stockholders under its own name, representing that it had made an exhaustive examination and expressing the opinion that

the best interests of the preferred stockholders would be preserved if the proposed waivers were given and the bonds issued. The positive belief is also expressed that the proposed financing would place the company in a stronger financial position than ever. Defendant's letter ends with these words: "We unhesitatingly recommend that you give your consent." Defendant did not then or at any other time advise stockholders or creditors that in giving its own consent, its seven per cent. preferred stock was, as a result, to be converted into an eight per cent. mortgage bond at 90 or 90-1/2. Defendant gave its written consent for 3014 shares. The total number consenting were 9911, and without defendant's consent, much less than the three-fourths would have been obtained. The other consenting stockholders are widely scattered, have small holdings, and are presumably the persons originally induced to buy the same by defendant or its associates. At a meeting of common stockholders held May 5, 1922, the mortgage bond issue was authorized and the contract with A. B. Leach & Company submitted and approved. The only stockholders present in person were the President of the corporation, who also owned a controlling interest in its common stock, the Vice President and Treasurer, who was the son of the President, the corporation's Secretary, and the bank official already mentioned as urging a bond issue to refund bank debts. None of them appear in the list of preferred stockholders.

The transaction was carried out as planned. The defendant took the entire issue of bonds at 90-1/2 and accrued interest. It exchanged for bonds, 3,000 shares of its preferred stock at 85 and accrued dividends. For 3,000 shares of preferred stock at 85 and accrued dividends, it received, without other consideration, bonds at 90-1/2. The money borrowed from defendant to pay the February 1, and from some one else to pay the May 1, dividends on the preferred stock, was paid back from the proceeds of the bond sales. No dividend was later ever declared or paid on the preferred stock. Interest was paid on the bonds up to and including May 1, 1924, but the following November 1 instalment was not paid, and thereupon the present Receiver was appointed. To what extent the corporation's capital was then impaired, or whether it was then or is now insolvent, does not appear in the record.

Plaintiff's action as Receiver is to compel defendant to account for the bonds received, for which it gave nothing except an attempted surrender of its preferred stock, and also the instalments of interest paid on such bonds.

The foregoing statement of undisputed facts plainly indicates the judgment proper to be rendered. Counsel have orally and in briefs covered a wide range of corporation law and have cited numerous authorities. Every proposition, with its supporting argument and authorities, has been studied and given my best consideration. Some independent lines of inquiry and additional authorities have also been studied. Obviously, it is impossible to discuss all the propositions advanced and relied on or to review fully the authorities cited and examined. My duty to other litigants forbids my doing more than announcing my conclusions, with a brief statement of some of the supporting reasons.

In my opinion, the delivery by the Struthers Furnace Company to A. B. Leach & Company of its first mortgage bonds at 90-1/2 and accrued interest in exchange for no other consideration than 3,000 shares of preferred stock at 85 and accrued dividends, is illegal and, under the facts of this case, is also a fraud upon creditors and other preferred stockholders. Section 8668 G. C. provides that dividends on preferred stock may be paid "out of the surplus profits of the company each year in preference to all other stockholders." Section 8724 forbids any corporation organized under the laws of this State from paying dividends except from surplus profits arising from its business. Such is the general and unalterable rule. In this instance, the company's charter and its issued certificates expressly provided that preferred stock should be redeemed only out of surplus profits, and that, beginning January 1, 1922, the corporation should, for the next five years set aside to redeem and retire said preferred stock, not less than ten per cent., and for the next five years, not less than fifteen per cent., and for each year thereafter, not less than twenty per cent. "of the net surplus profits of the company for the preceding year remaining after payment of preferred dividends and all taxes, including any state or federal income or excess profits taxes." It is reiterated many times that all redemption or retirement of preferred stock is to be made only from these net surplus profits. These charter provisions are exclusive

and controlling. The corporation cannot be permitted to do indirectly, under the guise of a purchase of preferred stock, that which it is forbidden to do directly.

Defendant asserts an additional right of purchase by virtue of the last paragraph of Section 8669, added in 1917. In my opinion, this contention is not tenable. Aside from the controlling consideration that the charter expressly provides otherwise, I think the language of said paragraph does not support defendant's contention. That part of the Section applies only when the charter has not otherwise expressly dealt with the subject. But even in cases when it does apply, it is a permission to redeem preferred stock by purchase, or by exchange for common stock, and not an authority to the corporation to buy and sell its own stock. It permits redemption by such purchase or exchange only on such terms as may from time to time be proposed by the Board of Directors and accepted by the holders thereof. The terms must be proposed to all the preferred stockholders and not by the Board of Directors to some favored insider. It is essential to redemption that stock so bought for that purpose, shall be cancelled and retired. For this and other reasons I am of opinion that the 1917 amendment was not intended to change or modify the long prevailing and well established Ohio rules pertaining to the right of a corporation to buy back its own stock.

An Ohio corporation may not deplete or reduce its contributed capital by giving back a part of it to some one or more stockholders under any guise, whether it be the cancellation of an unpaid stock subscription or the purchase of stock fully paid for. This results not merely from the prohibition to pay dividends otherwise than from surplus profits, but also from the well settled Ohio rule as to the trust fund theory of a corporation's contributed capital, and from the limitation upon its powers, which does not include the right to use its assets to buy or deal in its own stock, except to the extent expressly conferred. Notwithstanding the 1917 amendment, the law in Ohio is still that stated in the following cases: *State vs. Building Ass'n,* 35 O. S. 258; *Coppin vs. Greenlees,* 38 O. S. 275; *Gates vs. Tippecanoe Stone Co.,* 57 O. S. 60; *Mining Co. vs. Mfg. Co.* (6 C. C. A.) 62 Fed. 356; *Railway Co. vs. Iron Co.,* 46 O. S. 44; *Niles vs. Olszak,* 87 O. S. 229. In this respect, Ohio is in line

with the so-called English rule on the subject. Defendant cites, however, *Siders vs. Concrete Co.*, 13 C. C. (n. s.) 481, affirmed, 87 O. S. 519, as in conflict, but I do not so understand that case. It is true, some language is used in the Court of Appeals' opinion which, at a hasty glance, might indicate a view different from that above stated, but upon the facts, the case was the simple one of a corporation buying some outstanding shares, giving its note for the purchase price, and then reselling the stock, and when sued on the note, defending on the ground that the transaction was *ultra vires*. Having resold the stock and received the purchase price, it could not refuse to pay its outstanding note. In the Supreme Court, the affirmance was on the ground that the decision below had involved the weight of the evidence and therefore the judgment was not subject to review. This understanding of the Ohio decisions accords with the understanding of all text writers on Corporations who have studied the Ohio cases. See *Fletcher on Corporations*, Sec. 1135; 14 Cor. Jur. A, p. 297; note, 33 Amer. St. Rep., 345; all of whom say that the Ohio rule is the same as the English rule. I think it not too much to say that the consensus of opinion among Ohio lawyers is and has always been to the same effect.

Certain exceptions to the general rule are recognized in Ohio and elsewhere, of which the Siders case above cited, furnishes one illustration. The transaction now under inquiry is within no exception known to me. The Struthers Furnace Company, when the transaction took place, and had no surplus profits. On the contrary, at that time its contributed capital had been impaired. The Board of Directors and the common stockholders were not disposing of surplus profits which were under their control and might have been paid out as dividends. If there are surplus profits applicable to the payment of dividends, it may well be that a Board of Directors, with the consent or acquiescence of other stockholders, might divert those dividends to the purchase of capital stock, and, if creditors were not prejudiced, no one would have any right to complain. It is difficult to see how directors and common stockholders having control of the corporation, might do so without the knowledge or consent of preferred stockholders who have a prior right to a fixed cumulative dividend out of surplus earnings. In this case they had no voting power and were not consulted, and hence, even if there were surplus prof-

its from which the preferred stock might have been bought without impairing capital, the directors and common stockholders would have no right to take it away from the preferred stockholders except by their consent or acquiescence. In those jurisdictions where it is held that the general rule, in the absence of a charter or statutory prohibition is that a corporation has power to buy its own stock, there are likewise many well established exceptions which forbid the purchase.

In my opinion, the transaction under investigation is within those exceptions and would be held invalid in most, if not all, of the jurisdictions announcing a rule different from the Ohio rule. Aside from the fact that there were no surplus profits, there were also existing creditors in large amounts whose debts were in part refunded by this bond issue. The bonds became an outstanding debt, coincidentally at least, with the effort to retire this preferred stock, and in as much as the bonds were issued with the knowledge of defendant to refund prior existing debts, the new bonds are entitled to the status accorded to existing creditors when one comes to consider the validity of the attempt to buy back stock. The transaction with respect to this preferred stock was secret and not made a matter of public record. In that situation, the rights of future creditors are or may be, as in this case they were, prejudiced by the transaction.

Under these special conditions, the rule permitting a corporation to buy its stock is held not to apply, or, in other words, the transaction is within the exceptions rather than the rule. See I *Cook on Corporations,* 6th ed. Sec. 311; 14 Cor. Jur. A. p. 280. Mr. Cook says: "if stockholders do not object, there is no reason why the net profits of a corporation should not be applied to purchasing its stock, instead of being used for a dividend." This is the rationale of the rule. Obviously the reason does not apply if there are creditors and no net profits, or if, as in this case, part of the stockholders whose interests were especially prejudiced, are not given the opportunity to consent or object. Mr. Cook further says: "If the corporation is insolvent at the time of the purchase, it is clearly an invalid transaction and will be set aside. The rule goes still further, and declares that if a corporation, by a purchase of shares of its own capital stock, thereby reduces its actual assets below its capital stock and debts, or if the actual assets

at that time are less than the capital stock and debts, such purchase may be set aside, and the guilty corporate officers, as well as the vendor of the stock, may be rendered liable thereon at the instance of a corporate creditor." In the present case, the corporation, if not insolvent, was at least with an impaired capital and its assets were reduced below its capital stock and debts by the transaction in question. Nor do I understand the right of complaint is limited to corporate creditors alone. Other stockholders, if prejudiced, have an equal right to complain, unless they are barred by consent, or its equivalent, an equitable estoppel.

The Ohio rule, as well as these exceptions to the other rule, flows of necessity from the trust fund theory of the contributed capital of a corporation. Wherever that theory of the law is recognized, any transaction whereby a corporation seeks to return to a stockholder any part of its contributed capital, is invalid. This is equally true whether the attempt is made under the guise of cancelling an unpaid subscription or permitting it to be paid for otherwise than in accordance with the law on the subject, or whether it is under the guise of buying back a part of its capital stock. In substance and effect, no difference exists between cancelling an unpaid subscription and returning that subscription after it has been paid. That the trust fund theory is the law of Ohio and of this forum, will appear from the following cases: *Thoms & Brenneman vs. Goodman* (6 C. C. A.) 254 Fed. 39, 41; *Sawyer vs. Hoag,* 17 Wall. 610; *Upton vs. Tribilcock,* 91 U. S. 45, 47; *Sanger vs. Upton,* 91 U. S. 56, 60; *Farrington vs. Tennessee,* 95 U. S. 679, 686; *Clark vs. Bever,* 139 U. S. 96, 109; *Handley vs. Stutz,* 139 U. S. 417, 426. The same principles are reflected in Sec. 8684 G. C., which forbids an Ohio corporation to employ its assets or other property directly or indirectly for any other purpose than to accomplish the legitimate objects of its creation. The extent to which this doctrine is carried, will be seen by examining *Railway Co. vs. Iron Co.,* 46 O. S. 44; *Mining Co. vs. Mfg. Co.* (6 C. C. A.) 62 Fed. 356. Here, in substance and effect, the transaction is nothing more nor less than a secret effort of one preferred stockholder, with the co-operation and consent of the Board of Directors, and it may be also of the common stockholders, to divert a part of the contributed capital from the corporate objects and purposes and use it for the personal advantage of that stockholder. In

so doing, the Directors, and, if need be, common stockholders, were dealing with property on which creditors and preferred stockholders had a prior claim or demand. It was beyond the power of the Board of Directors, acting with or without the approval of the common stockholders, to divert corporate assets to this use and purpose. The transaction violates numerous principles of corporation law and most of the principles of justice and honesty.

To sustain the transaction would be to sanction a gross fraud upon other preferred stockholders. In Ohio, preferred stock is, in substance, a liability of the corporation. See *Miller vs. A. D. Baker Co.* (D. C.) 208 Fed. 190. No preferred stockholder other than defendant, was advised of the transaction when their waivers were solicited by defendant and by officers of the corporation. They consented to waive their priority in favor of the mortgage bond issue upon representations made to them in which defendant joined and under a belief that the proceeds were to go into the treasury of the corporation to pay debts or to be used for working capital, or for some corporate purpose. They were not consenting that A. B. Leach & Company, from whom they had bought their preferred stock, should have its 3,000 shares returned to it out of the proceeds of that bond issue. They were not consenting that the large and powerful and inside preferred stockholder, upon whom they relied in buying their stock, should exchange its stock for a first mortgage on the corporation's assets. It is not conceivable that they ever would have consented to waiving their priority in favor of a mortgage to secure A. B. Leach & Company. The representations made by the officers of the Furnace Company and by A. B. Leach & Company to preferred stockholders to procure their consents, and the failure of both to disclose the private advantage to be given to defendant, constitutes a gross form of fraud and unfair dealing.

Nor can the transaction be sustained from the point of view of creditors. All the authorities agree that any transfer by a corporation of any part of its capital assets to one of its stockholders, or any mortgage given to any of its stockholders for the purchase price of its stock, is invalid, if the rights of creditors are thereby injured or prejudiced. There is some difference as to whether creditors becoming such subsequent to the trans-

action, have any right to complain. This difference in the authorities will not be discussed, because no opinion with respect thereto need be expressed. In this case, for reasons already stated, the outstanding bonds, being given to take up preexisting debts, are entitled to rank as existing creditors with respect to this transaction. The most that can be said to the contrary is that this transaction is contemporaneous with the creation of the bond issue and not that the bonds are created later. No buyer of bonds, except defendant, was advised that a large part of the proceeds was to go to one preferred stockholder for the purpose of returning to him his contribution to the corporate capital. Defendant, when buying these bonds, knew the terms of its own contract. It was mutually expected that defendant would not keep the bonds but would sell and distribute them to the general public, as it had previously done with the preferred stock. Every buyer of a bond, under the circumstances appearing in the record, had a right to expect that none would be issued except for money or its equivalent, and that this money would be turned into the treasury of the corporation and used for proper corporate purposes. Every bondholder had then and has now an interest in bringing about this result. The security back of his bond, as well as the future success of the corporation, gives him a right to compel this result. It is and was a fraud upon each and every buyer of a bond, to sell the same to him upon a representation that the entire proceeds were to pay a floating debt, furnish working capital, or be used for some like corporate purpose, without disclosing the fact that a part of the bonds was to be diverted to defendant in an attempt to cancel preferred stock. In this aspect, a creditor's right to relief rests upon a stronger foundation than in many cases in which subsequent creditors have been permitted to recover back capital assets transferred to a creditor in an effort to extinguish his shares. See the following: *Coleman vs. Tepel,* (3 C. C. A.) 230 Fed. 63; *Hamor vs. Taylor-Rice Eng. Co.* (C. C.), 84 Fed. 393; *Clark vs. Clark Mchy. Co.,* 151 Mich. 417; *Crandall vs. Lincoln,* 52 Conn. 731; 52 Amer. Rep. 560; *A. & W. etc. Ass'n vs. Smith* (Wis.), 135 Amer. St. 42; *Commercial Nat'l Bank vs. Burch,* 141 Ill. 519.

No difficulty is perceived in giving the relief prayed for. Defendant, among other things, contends that the Receiver represents merely the corporation, which is estopped by its conduct to complain; that defendant's

purchase of the bond issue was an entire contract, and that to compel the return of a part of the bonds would be making for it a new contract; and that the corporation, having received and retained the proceeds of the bond sales, is not entitled to relief because the parties cannot be restored to their former position. These contentions have received due consideration.

The plaintiff Receiver occupies a different position than the corporation. He represents and is entitled to enforce any and all rights that any creditor has or might enforce. He represents also the rights of the preferred stockholders who, under the terms of the charter and the laws of Ohio, are more nearly assimilated to creditors than to common stockholders. That which is complained of was done without the knowledge, consent, or acquiescence of creditors or preferred stockholders. The defendant, however, had full knowledge of the terms under which this preferred stock had been issued and on which it might be redeemed. It had knowledge of the impaired financial condition of the corporation. It took an active and knowing part in the course of conduct herein found to be illegal and fraudulent as to preferred stockholders and creditors whereby bonds were delivered to it without other consideration than an ineffectual attempt to surrender 3,000 shares of preferred stock. The rights of innocent creditors and of other innocent preferred stockholders are not to be waived by the Board of Directors or by the silence or acquiescence of common stockholders. It should not be forgotten that the right of corporate control was reserved to common stockholders and that the preferred stockholders had no right to vote or to participate in the management. In this respect, they were as helpless as creditors. Persons having control of a corporation, sustain to them a fiduciary relationship quite equal to that sustained to creditors.

In substance, nothing happened to defendant's 3,000 shares of preferred stock as a result of this transaction. In equity, if not at law, the title thereto has at all times been in the defendant. The corporation's lack of power and the defendant's imputed, if not actual knowledge, leaves the equitable title, at least, where it has always been. A. B. Leach & Company, as to these 3,000 shares, has never ceased to be a preferred stockholder. No rescission or cancellation, as between the defendant and the corporation, is necessary to grant relief.

Nor, in my opinion, has the corporation received from the defendant or now has anything belonging to the defendant, which it is necessary to restore. Defendant bought bonds at 90½ and accrued interest. As to a certain part of those bonds, it paid nothing to the corporation. It merely made an ineffectual attempt to settle therefor by surrendering certificates for 3,000 shares of preferred stock. It has, in effect, received certain corporate assets charged with a trust in favor of creditors and preferred stockholders. It has, in effect, received and still possesses certain bonds or the proceeds thereof, which are a trust fund and for which it must account. If defendant now had these bonds, full equity would be done by requiring their surrender and cancellation, with the payment back of any and all interest heretofore paid thereon by the corporation. It is admitted in defendant's answer that it has sold all the bonds and has received the money. Equity therefore requires that it should account for that money upon the theory that it has received property of the corporation charged with a trust, and, having converted the same, must account for the proceeds.

In the presence of a situation so simple, it is unnecessary to discuss the law of *ultra vires* or the doctrine of estoppel against a corporation, or the equitable principles of partial rescission with compensation, or the law of separable and entire contracts. As to the doctrine of *ultra vires*, the law of this forum is summed up in *Central Transportation Co. vs. Pullman Palace Car Co.*, 139 U. S.. 24, 54, 58, 59-60. See also *De La Vergne Co. vs. German Sav. Inst.*, 175 U. S. 58; *West Penn Chemical Co. vs. Prentice* (3 C. C. A.) 236 Fed. 891; *Mining Co. vs. Mfg. Co.* (6 C. C. A.) 62 Fed. 356; *Commissioners vs. State of Ohio*, 78 O. S. 287.

Judgment will be rendered for plaintiff for the sum of $255,000 and all interest heretofore paid on the bonds represented by said sum. Interest thereon may be calculated to the first day of this term of court, and judgment entered for the aggregate sum. Costs will follow this judgment. As an equitable favor, defendant will be permitted to pay said judgment, except costs, in mortgage bonds of the issue in question, whether now owned or hereafter acquired, provided such payment is made within thirty days from the date of entry of this judgment. If not so paid, execution may issue, solvable only in legal tender.

D. C. Westenhaver,

March 1, 1926. *Judge.*

FINAL DECREE.

(Entered March 18, 1926, by D. C. Westenhaver, Judge.)

This cause came on to be heard upon the petition of the plaintiff, Hugh W. Grant, Receiver of The Struthers Furnace Company, the amended answer of the defendant, A. B. Leach & Company, Inc., and the reply of the plaintiff to said amended answer, and was tried to the Court upon evidence and submitted upon oral argument and brief of counsel.

Upon consideration whereof, the Court finds that the exchange of bonds of The Struthers Furnace Company for three thousand shares of the preferred stock of said Company was beyond the power of the corporation and its directors to accomplish and was void; and that it constituted an unlawful transfer of the corporation assets and accomplished a fraud to the detriment of the bondholders, stockholders and creditors of the corporation, and that the defendant, A. B. Leach & Company, Inc., is liable and obligated in equity to account to the plaintiff for the face value of the first mortgage gold bonds unlawfully exchanged by The Struthers Furnace Company with A. B. Leach & Company, Inc., for three thousand shares of the preferred stock of said Company held by A. B. Leach & Company, Inc., to the extent of the value placed upon said preferred stock in the exchange, that is

Two Hundred and Fifty-five Thousand ($255,000.00) Dollars, with interest from May 1, 1922, to February 2, 1926, the first day of the present term of court, at six per cent. per annum, said principal sum and interest amounting on the first day of this term of court, to-wit, February 2, 1926, to Three Hundred Twelve Thousand and Three Hundred Seventy-five ($312,375.00) Dollars.

The Court further finds that The Struthers Furnace Company paid the interest coupons upon Two Hundred Fifty-five Thousand ($255,000.00) Dollars of the face value of said bonds as follows, to-wit:

November 1, 1922	$10,200.00
May 1, 1923	10,200.00
November 1, 1923	10,200.00
May 1, 1924	10,200.00

and that the interest on said respective amounts from said respective dates, at six per cent. per annum, up to February 2, 1926, the first day of the present term of court, together with the principal, amounts to Forty-six Thousand Nine Hundred Twenty ($46,920.00) Dollars.

Wherefore, it is ordered, adjudged and decreed, and judgment is hereby rendered in favor of the plaintiff and against said A. B. Leach & Company, Inc., in the sum of Three Hundred Twelve Thousand Three Hundred Seventy-five ($312,375.00) Dollars.

It is further adjudged and decreed, by way of alternative decree, that if the said defendant, A. B. Leach & Company, Inc., shall surrender to The Guardian Savings & Trust Company, Trustee, for cancellation, any amount of said first mortgage gold bonds issued by The Struthers Furnace Company, in such denominations as the defendant may be able to procure the same, up to the amount of Two Hundred Fifty-five Thousand ($255,000.00) Dollars, face value thereof, together with the unpaid interest coupons attached thereto, within thirty days from the entry of this decree, or in the event that an appeal is allowed from this decree and perfected and a supersedeas bond filed and approved, then within thirty days from the filing of the mandate issued by the court or courts to which such appeal is taken, and shall at the same time and within the said time limits pay to the plaintiff Receiver the amount of the interest paid by The Struthers Furnace Company upon said bonds so surrendered and deposited, together with interest thereon at six per cent. per annum, to the date of such payment, then the face value of said bonds so surrendered, but not of the unpaid coupons thereon, shall be credited upon the principal of said judgment, to-wit, upon Two Hundred Fifty-five Thousand ($255,000.00) Dollars, and the remainder of said principal of said judgment shall bear interest at the rate of six per cent. per annum, from and after May 1, 1922, to the second day of February, 1926, and the total of said judgment, if any, remaining unpaid, shall bear interest at the legal rate computable upon judgment from February 2, 1926, to date of payment.

It is ordered that the three thousand shares of preferred stock heretofore deposited with the Clerk of this Court shall remain in the custody of the Clerk, subject

to the order of A. B. Leach & Company, Inc., upon their compliance with the terms of this decree, and judgment is rendered for the plaintiff herein against the defendant for the costs of this action. To all of which the defendant, by its attorneys, excepts.

Approved:

WILSON, HAHN, HENDERSON & WILSON,
Attorneys for Plaintiff.

PETITION FOR APPEAL.

(Filed April 21, 1926.)

To the Honorable D. C. Westenhaver, Judge in said Court and Cause Presiding:

Now comes A. B. Leach & Company, Inc., a Corporation, the above named defendant by Day & Day and Newman, Poppenhusen, Stern & Johnston, its attorneys and feeling itself aggrieved by the final decree of this Court entered herein on the 18th day of March A. D. 1926, hereby prays that an appeal may be allowed to the said defendant from the said decree to the Circuit Court of Appeals for the Sixth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and that a complete transcript of the record, proceedings and evidence upon which said decree is based, duly authenticated, may be sent to the Clerk of the Circuit Court of Appeals for the Sixth Circuit; that an Order of Supersedeas may be entered herein pending the final disposition of the cause and that the amount of security may be fixed by the order allowing this appeal.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
DAY & DAY,
Solicitors for Defendant.

ASSIGNMENT OF ERRORS.

(Filed April 21, 1926.)

Now comes the Appellant, A. B. Leach & Company, Inc., a Corporation, by Day & Day, and Newman, Poppenhusen, Stern & Johnston, its Solicitors, and in connection with its Petition for Appeal says, that in the record and proceedings and in the final decree aforesaid, manifest error has intervened to the prejudice of the Appellant, in that:

1. The court erred in finding that "the exchange of bonds of The Struthers Furnace Company for three thousand (3000) Shares of the Preferred Stock of said company was beyond the power of the Corporation and its Directors to accomplish and was void."

2. The court erred in finding that "the exchange of bonds of The Struthers Furnace Company for three thousand (3000) Shares of the Preferred Stock of said Company * * * constituted an unlawful transfer of the corporation assets."

3. The court erred in finding that "the exchange of bonds of The Struthers Furnace Company for three thousand (3000) shares of the Preferred Stock of said Company * * * accomplished a fraud to the detriment of the Bondholders, Stockholders and Creditors of the corporation" or any of them.

4. The court erred in finding that the Defendant, A. B. Leach and Company, Inc., "is liable and obligated in equity to account to the Plaintiff."

5. The court erred in finding that the Defendant, A. B. Leach & Company, Inc., "is liable and obligated in equity to account to the Plaintiff for the face value of the First Mortgage Bonds * * * exchanged by The Struthers Furnace Company with A. B. Leach & Company, Inc., for three thousand (3000) Shares of the Preferred Stock of said company held by A. B. Leach & Company, Inc., to the extent of the value placed upon said Preferred Stock in the exchange, that is, Two Hundred Fifty Five Thousand ($255,000.00) Dollars, with interest from May 1, 1922 to February 22, 1926 * * * at six per cent (6%) interest per annum" or to any other extent whatsoever.

6. The court erred in rendering a judgment or decree in favor of the Plaintiff against A. B. Leach &

Company, Inc., in the sum of Three Hundred Twelve Thousand, Three Hundred Seventy Five ($312,375.00) Dollars, or in any sum whatsoever.

7. The court erred in not holding that Plaintiff had no authority to institute or maintain the suit or proceedings herein against the Defendant, A. B. Leach & Company, Inc.

8. The court erred in not holding that the Plaintiff was estopped to claim that the exchange of bonds for Preferred Stock of The Struthers Furnace Company pursuant to the contract between said Company and A. B. Leach & Company, Inc., was *ultra vires,* the said The Struthers Furnace Company, or in any other respect unlawful, void or voidable.

9. The court erred in not holding that the Plaintiff was guilty of such laches as debarred him from any relief in a court of equity.

10. The court erred in not holding that the contract of April 15, 1922 between A. B. Leach & Company, Inc., and The Struthers Furnace Company for the purchase of the latter's bonds by the former, pursuant to which three thousand (3000) shares of Preferred Stock in The Struthers Furnace Company were assigned and delivered by A. B. Leach & Company, Inc., in part payment of said bonds, was an entire contract which could not be rescinded by the Plaintiff except upon his tendering to the Defendant a sum of money equal to the money paid to The Struthers Furnace Company by A. B. Leach & Company, Inc., subject to any adjustment between the parties on account of interest, as well as the shares of Preferred Stock so assigned and delivered by the said A. B. Leach & Company, Inc., to The Struthers Furnace Company.

11. The court erred in not holding that that part of the contract between The Struthers Furnace Company and A. B. Leach & Company, Inc., for the purchase by the latter of the former's bonds to an amount of One Million Five Hundred Thousand ($1,500,000.00) Dollars, which provided A. B. Leach & Company, Inc., should have the right to take and pay for any part of Four Hundred Fifty Thousand ($450,000.00) Dollars Par Value of said bonds on the following basis:

> "For every Fifteen Hundred Dollars ($1500.-00) Par Value Bonds at the price of Ninety per cent (90%) and accrued interest, there shall be paid ten

(10) shares of the Furnace Company's Preferred Stock at Eighty Five Dollars ($85.00) per share and accrued dividend, the balance to be paid in cash."

could not be separated from the other part of said contract and that there could be no rescission of said contract by the Plaintiff without his returning to A. B. Leach & Company, Inc., not only the Shares of Preferred Stock delivered by said Defendant to The Struthers Furnace Company, but also the money paid by A. B. Leach & Company, Inc., to The Struthers Furnace Company pursuant to said provision, less any adjustment on account of interest due to either party.

12. The court erred in not holding that the Defendant, A. B. Leach & Company, Inc., could not be placed in statu quo and that Plaintiff was not entitled to any relief in a court of equity.

13. The court erred in not holding that the measure of Plaintiff's damages, if any, was the difference, if any, between the fair market value of the Preferred Stock of The Struthers Furnace Company assigned and transferred by A. B. Leach & Company, Inc., pursuant to the latter's contract with the former for the purchase of the bonds, at the time of delivery or on the date of said contract, and the value of said Preferred Stock fixed in said contract.

14. The court erred in not holding that the measure of Plaintiff's damages, if any, was the difference, if any, between the reasonable value of the bonds of The Struthers Furnace Company of the face value of Two Hundred Fifty Five Thousand ($255,000.00) Dollars and the reasonable value of the three thousand (3000) shares of the Preferred Stock of The Struthers Furnace Company delivered to The Struthers Furnace Company by A. B. Leach & Company, Inc., in part payment of the latter's purchase of the former's bonds of the face value of One Million Five Hundred Thousand ($1,500,000.00) Dollars, less any adjustment on account of interest found due to either party from the other.

15. The court erred in not holding that The Struthers Furnace Company had sustained no damage by reason of its having accepted the Preferred Stock surrendered to it by A. B. Leach & Company, Inc., in part payment of the latter's contract for the purchase of the former's bonds.

16. The court erred in not holding that it would be unconscionable and inequitable to enter a decree against the Defendant in the sum of Three Hundred Twelve Thousand Three Hundred Seventy-five ($312,375.00) Dollars or in any other sum upon Plaintiff's mere tender of the shares of Preferred Stock delivered to The Struthers Furnace Company by A. B. Leach and Company, Inc.

17. The court erred in not holding that Plaintiff represented only The Struthers Furnace Company and that he had no other or greater rights than said Company.

18. The court erred in not holding that under the Laws of the State of Ohio, The Struthers Furnace Company could lawfully receive the Shares of Preferred Stock in said company delivered to it by A. B. Leach and Company, Inc., in part payment of the latter's contract with the former for the purchase of the former's bonds pursuant to the terms of said contract.

19. The court erred in not holding that under the charter of The Struthers Furnace Company, the certificates of Preferred Stock, and the laws of the State of Ohio, The Struthers Furnace Company could lawfully receive in part payment of its bonds three thousand (3000) shares of Preferred Stock from A. B. Leach & Company, Inc., as provided in the contract of April 15, 1922, and the resolutions that were adopted by The Struthers Furnace Company pursuant thereto.

20. The court erred in not holding that The Struthers Furnace Company had, under the laws of the State of Ohio, and under the provisions of its charter, the express terms of the certificates of Preferred Stock, and the resolutions and by-laws of the Company, the option and power to redeem its said Preferred Stock, in whole or in part, by purchase thereof by the corporation upon such terms as were proposed and adopted by the Board of Directors of The Struthers Furnace Company and accepted by A. B. Leach and Company, Inc., the holder of three thousand (3000) shares of said Preferred Stock.

21. The Court erred in holding that the plaintiff, as Receiver of The Struthers Furnace Company, represented and could enforce the claims or rights, if any, of the holders of Preferred Stock (other than A. B. Leach and Company, Inc.,) of The Struthers Furnace Company.

22. The Court erred in holding that the Plaintiff, as Receiver of The Struthers Furnace Company, represented and could enforce the claims or rights, if any, of the present creditors of The Struthers Furnace Company.

23. The court erred in holding that it was provided in the charter of The Struthers Furnace Company and the certificates of Preferred Stock that said certificates could be redeemed only from the net surplus profits left at the end of each year after a payment of the agreed Preferred dividend and all taxes.

24. The court erred in not dismissing the Plaintiff's Bill for want of equity.

25. The court erred in rendering judgment for the Plaintiff against the Defendant for costs.

26. There are other plain errors of the court apparent on the face of the record not hereinbefore specifically assigned.

Wherefore, Defendant prays that the said decree be reversed and remanded with directions to dismiss Plaintiff's Bill of Complaint for want of equity or that the District Court proceed in accordance with the law and with such other directions as to this Honorable Court shall appear to be meet and proper.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
DAY & DAY,
Solicitors for Petitioner and Appellant.

ORDER ALLOWING APPEAL.

(Entered Apr. 21, 1926, by D. C. Westenhaver, Judge.)

This matter having come on to be heard in open court upon the petition of A. B. Leach & Company, Inc., defendant herein, for an appeal from the final decree of

the Court entered herein on the 18th day of March, A. D. 1926, to the Circuit Court of Appeals for the Sixth Circuit; and the said defendant having prayed that the amount of security to be given by it be fixed by this Court, and that an order of supersedeas be entered, and the defendant having filed its assignment of errors and presented the same to the Court with its petition for appeal;

It is Ordered, Adjudged and Decreed, that said appeal be and the same hereby is allowed upon the said defendant's filing its appeal bond herein in the sum of Three Hundred Seventy-five Thousand Dollars ($375,000.00), conditioned as required by law and with surety to be approved by the Court forthwith, and that thereupon said appeal shall operate as a supersedeas.

BOND ON APPEAL.

(Approved and filed Apr. 21, 1926.)

Know All Men by These Presents, That we, A. B. Leach & Company, Inc., a corporation, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Hugh W. Grant, as Receiver for The Struthers Furnace Company, a corporation, in the full and just sum of Three Hundred Seventy-five Thousand ($375,000.00) Dollars, to be paid to the said Hugh W. Grant, as Receiver for The Struthers Furnace Company, a corporation, his certain attorneys, successors or assigns: to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents. Sealed with our seals and dated this 21st day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-six.

WHEREAS, lately at a session of the District Court of the United States for the Eastern Division of the Northern District of Ohio, in a suit pending in said Court, between Hugh W. Grant, as Receiver for The Struthers Furnace Company, a corporation, a judgment or decree was rendered against the said A. B. Leach & Company, Inc., a corporation, and the said A. B. Leach & Company, Inc., a corporation having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment or decree in the aforesaid suit, and a citation directed to Hugh W. Grant, as Receiver for The Struthers Furnace Company, a corporation, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said Circuit, on the 21st day of May, next.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said A. B. Leach & Company, Inc., a corporation, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

A. B. Leach & Company, Inc.,
By Day & Day,
Its Attys. and Attys. in fact.

Fidelity & Deposit Company of Maryland,
By Philip Laurenson (Seal)
Attorney in fact.

Sealed and delivered
in Presence of
Donald W. Kling,
H. J. Darley.

Approved by

D. C. Westenhaver,
United States District Judge.

CITATION.

The President of the United States, to Hugh W. Grant, as Receiver for The Struthers Furnace Company, a Corporation, Greetings:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Sixth Circuit, at the City of Cincinnati, within 30 days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States in and for the Northern District of Ohio, Eastern Division, and filed in the Clerk's office of said Court on the 21st day of April, A. D. 1926, in a cause wherein A. B. Leach & Company, Inc., a corporation, is appellant and you appellee, to show cause, if any, why the decree rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable William Howard Taft, Chief Justice of the United States, this 21st day of April, A. D. 1926.

D. C. WESTENHAVER,
District Judge.

ATTEST:

B. C. MILLER,
Clerk (Seal)

By G. L. PATTERSON,
Deputy Clerk.

Apr. 22, 1926. Service of the above citation is hereby acknowledged and appearance of appellee is hereby entered.

J. P. WILSON & A. M. HENDERSON,
Solicitors for Appellee.

STIPULATION RE CERTIFICATION OF RECORD.

(Filed April 21, 1926.)

In accordance with Section 7 of Rule 44 of the general rules of this Court, it is hereby agreed that the record as presented to the Clerk by the printer, may be certified by the Clerk as required by law and the rules of the Appellate Court, as a true, full and complete copy of the original pleadings, papers and orders used on the trial of this cause, as set forth in the precipe for transcript, without further comparison by the clerk.

J. P. Wilson & A. M. Henderson,
Attorneys for Plaintiff.

Day & Day,
Newman, Poppenhusen, Stern & Johnston,
Attorneys for Defendant.

PRAECIPE.

(Filed April 21, 1926.)

To the Clerk of the Above Entitled Court:

You will please prepare transcript of the record in this cause for the Circuit Court of Appeals for the Sixth Circuit on the appeal of the above named defendant heretofore allowed, and included in such transcript the following pleadings, orders and papers on file, to-wit:

Plaintiff's bill of complaint.
Defendant's answer.
Defendant's amended answer.
Plaintiff's reply.
The final decree.
Court's opinion.

The petition for appeal.

Assignment of errors.

The order allowing appeal and fixing amount of supersedeas bond.

Supersedeas bond.

Defendant's motion that certain portions of the testimony be reproduced in the exact words of witnesses in the statement of evidence.

Order directing that certain testimony be reproduced in the exact words of witnesses.

Statement of the evidence.

Order approving statement of evidence.

Stipulation in Statement of the Evidence just preceding Court's certificate, together with Court's certificate.

Praecipe for transcript of record.

Citation with endorsement.

Stipulation regarding printed transcript.

Clerk's certificate.

You will please deliver all papers to The Gates Legal Publishing Company, Blackstone Building, Cleveland, Ohio, for printing.

We hereby agree that the above and foregoing praecipe is correct; that the records, documents, papers and proceedings therein set forth are sufficient for a compete record in this cause on appeal, and we hereby adopt the foregoing as a list designated by each of the parties to this cause to complete said transcript, and we hereby waive the issuance and service of notice upon any party hereto, and agree that said praecipe shall be obeyed by, and acted upon by, the clerk as fully and to all intents and purposes in the same manner as if said praecipe had been regularly filed and a true copy thereof served upon each party hereto.

Dated: April 21, 1926.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
DAY & DAY,
Solicitors for Defendant, A. B. Leach and Company, Inc.

J. P. WILSON & A. M. HENDERSON,
Solicitors for Plaintiff, Hugh W. Grant as Receiver for The Struthers Furnace Company.

ORDER EXTENDING TIME FOR FILING RECORD.

(Entered May 19, 1926, by D. C. Westenhaver, Judge.)

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Circuit Court of Appeals for the Sixth Circuit, pursuant to the appeal sued out, is extended until the 5th day of June, 1926.

SUPPLEMENTAL PRAECIPE.

(Filed May 19, 1926.)

To the Clerk of the above entitled Court:

In the preparation of the Transcript of the Record in this cause for the Circuit Court of Appeals for the Sixth Circuit on the appeal of the above named defendant heretofore allowed, you will please include in such transcript an order made by the Honorable D. C. Westenhaver, a Judge of this Court, extending the time for filing said record and deliver said order, together with this supplemental praecipe, to The Gates Legal Publishing Company, Blackstone Building, Cleveland, Ohio, for printing.

We hereby agree that this supplemental praecipe and the order extending the time for filing the record of this cause should be included in the printed record, as a part thereof, for the purpose of making said record complete, and we hereby waive the issuance and service of notice of the filing of this supplemental praecipe, and that it shall be obeyed by, and acted upon by, the clerk as fully and to all intents and purposes in the same man-

ner as if said supplemental praecipe had been regularly filed and a true copy thereof served upon each party hereto.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
and
DAY & DAY,
Solicitors for the Defendant,
A. B. Leach & Co., Inc.

JAMES P. WILSON,
and
A. M. HENDERSON,
Solicitors for the Plaintiff,
Hugh W. Grant as Receiver for
The Struthers Furnace Company.

CERTIFICATE OF CLERK.

Northern District of Ohio, ss:

I, B. C. Miller, Clerk of the United States District Court within and for said District, do hereby certify that the foregoing printed pages contain a full, true and complete copy of the record and all proceedings in this cause, including the petition for appeal, assignment of errors, order allowing appeal and the bond on appeal and the order made by this Court extending the time for filing the record in this cause in the Circuit Court of Appeals for the Sixth Circuit, in accordance with the praecipe for transcript filed herein, the originals of which remain in my custody as Clerk of said Court.

There is also attached to and transmitted herewith the original citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name and affixed the seal of said Court, at Cleveland, in said District, this 1st day of June, A. D. 1926, and in the 150th year of the Independence of the United States of America.

B. C. MILLER, *Clerk,*

(Seal)

By F. J. DENZLER,
Deputy Clerk.

SUPPLEMENTAL TRANSCRIPT OF RECORD

(Filed June 11, 1928)

No. .....

United States Circuit Court of Appeals

SIXTH CIRCUIT.

A. B. LEACH & COMPANY, INC.,
Appellant,

vs.

HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY,
Appellee.

No. 1606. EQUITY.

APPEAL FROM UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

SUPPLEMENT TO TRANSCRIPT OF RECORD.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
11 So. La Salle Street, Chicago, Ill.,
DAY & DAY,
Engineers Bank Bldg., Cleveland, Ohio,
Attorneys for Appellant.

WILSON, HAHN & WILSON,
Terminal Bldg., Youngstown, Ohio, and
A. M. HENDERSON,
City Bank Bldg., Youngstown, Ohio,
Attorneys for Appellee.

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United States Circuit Court of Appeals

SIXTH CIRCUIT.

No. 1606.

A. B. LEACH AND COMPANY, INC., *Appellant,*

vs.

HUGH W. GRANT, Receiver of THE STRUTHERS FURNACE COMPANY, *Appellee.*

IN EQUITY.

STIPULATION OF COUNSEL RELATIVE TO NEW MATTER TO BE INCLUDED IN THE RECORD.

Now come the parties hereto, by their respective counsel, in conformity with a suggestion heretofore made by this Court, and hereby stipulate and agree that certified copies of the pleadings and application filed with, and orders made by the Court of Common Pleas of Mahoning County, Ohio, in causes numbered 56102 and 56103, respectively, on the docket of said Court in cases entitled, respectively, Louis S. Baldwin, plaintiff, vs. The Struthers Furnace Company and The Guardian Savings and Trust Company, Trustee, defendants, and The Guardian Savings and Trust Company, Trustee, plaintiff, vs. The Struthers Furnace Company, defendant, be filed with this Court for its consideration in the determination of this cause, and that copies of this stipulation and said pleadings, application and orders be printed and filed with this Court as supplementary to the Transcript of Record hereinbefore filed:

The petition in the Baldwin case;

The petition in The Guardian Savings and Trust Company case;

The Journal Entry made by the Court on January 20, 1925, in the Baldwin case;

The Journal Entry made by the Court on January 22, 1925, in The Guardian Savings and Trust Company case;

The application made by the Receiver, filed July 30, 1925, in The Guardian Savings and Trust Company case;

The Journal Entry made by the Court on said application dated July 30, 1925, in The Guardian Savings and Trust Company case.

It is further stipulated and agreed by said parties, by their respective counsel, that no notice of the order authorizing and directing Hugh W. Grant as Receiver, to commence an action against A. B. Leach and Company, Inc. was given to any one by counsel for said Receiver.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
DAY & DAY,

Counsel for Appellant, A. B. Leach & Company, Inc.

A. M. HENDERSON,
JAMES P. WILSON OF
WILSON, HAHN & WILSON,

Counsel for Appellee, Hugh W. Grant, Receiver of The Struthers Furnace Company.

IN THE COURT OF COMMON PLEAS.

STATE OF OHIO,
MAHONING COUNTY, SS.

THE GUARDIAN SAVINGS AND TRUST COMPANY, TRUSTEE,
Cleveland, Ohio,
Plaintiff,

vs.

THE STRUTHERS FURNACE COMPANY,
Struthers, Ohio,
Defendant.

No. .....

PETITION.

FIRST CAUSE OF ACTION.

Now comes The Guardian Savings and Trust Company and for its first cause of action says that it and the defendant are corporations duly organized and existing under the laws of the State of Ohio.

Plaintiff further says that on or about May 1, 1922, the defendant in accordance with resolutions duly adopted by its Board of Directors and stockholders at respective meetings thereof duly called and held, authorized an issue of bonds to be executed under its corporate seal by its duly authorized officers in an amount not exceeding in the aggregate the principal sum of $1,500,000 at any one time outstanding; said bonds to be either coupon or registered and bearing date May 1st, 1922, by the terms of which bonds the defendant promised to pay to the bearer thereof or in case of registered bonds, to the registered holder thereof, the face amount of said bonds, all of said bonds to be due on May 1st, 1942, and to be payable in gold coin of the United States of America of the then standard of weight and fineness, and to bear interest at the rate of 8% per annum from the date thereof until paid, interest payable semi-annually on the 1st days of May and November in each year in like gold coin, such interest to be evidenced by coupons attached to the bonds for successive installments thereof.

That on or about May 18, 1922, the defendant being thereunto duly authorized by the action of its Board of

Directors and of its stockholders at respective meetings thereof duly called and held, duly made, executed and delivered to the plaintiff as Trustee, its First Mortgage Trust Deed (hereinafter referred to as the "Mortgage") dated as of May 1st, 1922, wherein and whereby, in order to secure the payment of the principal and interest of all such bonds at any time outstanding and to secure the performance and observance of all the covenants and conditions in such Mortgage contained, the defendant granted, bargained and conveyed unto the plaintiff as Trustee, its successors and assigns forever, certain properties hereinafter described.

After the execution and delivery of said Mortgage the defendant duly made and executed bonds of the aggregate face value of $1,500,000 of said issue, all of which bonds were duly certified by the plaintiff as Trustee, as provided in said Mortgage, and all of said bonds were duly issued by the defendant for a valuable consideration and in accordance with the provisions of said Mortgage; that all of said bonds are now outstanding in the hands of various persons and corporations who are now the owners and holders thereof, for value, and said bonds are in all respects valid and outstanding obligations of the defendant.

That the plaintiff duly accepted the trusts created by the Mortgage and was and now is fully authorized and empowered to execute all trusts and privileges created and reposed in it under and by virtue of the provisions thereof.

That by said Mortgage it is provided in Article V thereof:

Section 2. "In case one or more of the following events, herein termed 'events of default,' shall happen, that is to say,

"(a) default shall be made in the payment of any installment of interest on any of the bonds as the same shall become payable, as therein and herein expressed and such default shall continue for thirty days:

then, the Trustee may in its discretion, and upon request in writing by the holders of one-fourth in amount of the bonds then outstanding, shall declare the principal of all the bonds, if not already due, to be forthwith due and payable and upon such declaration the same shall become due and payable immediately.

Section 17. "In case—

"(1) Default shall be made in the payment of any installment of interest on any bond or bonds at any time outstanding, and such default shall continue for a period of thirty days;

then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of Eight Per Cent (8%) per annum upon the overdue principal and installments of interest; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel and any expenses or liabilities incurred by the Trustee hereunder; and in case the Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as Trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid."

That the defendant defaulted in the payment of the semi-annual installment of interest due on all the said bonds November 1st, 1924, and such default has continued for a period of more than thirty days; that the plaintiff as Trustee has, pursuant to the terms of said Mortgage, declared the principal of all the bonds outstanding due and payable and has demanded that the Company pay to it as Trustee for the benefit of the holders of the bonds and coupons now outstanding, the entire principal amount of all said bonds, the interest now due and payable on said bonds with interest at 8% per annum upon the overdue installment of interest and principal.

SECOND CAUSE OF ACTION.

For its second cause of action plaintiff adopts all and singular the averments and allegations contained in the foregoing first cause of action as fully as if rewritten herein.

Plaintiff further says that by the Mortgage duly made, executed and delivered by the defendant to the plaintiff as Trustee to secure the payment of the princi-

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pal and interest of all of the said bonds at any time outstanding and to secure the performance and observance of all the covenants and conditions in said mortgage contained, the defendant granted, bargained, sold, released, conveyed, assigned, transferred, mortgaged, pledged, set over, warranted and confirmed unto the plaintiff as Trustee and its successors in the trust created by said mortgage all and singular the following described property:

All the following described real estate situated in the City of Struthers, County of Mahoning and State of Ohio:

Being known as part of Out Lot No. 21 and all of Out-Lot No. 23 according to the latest enumeration of lots in said City, and bounded and described as follows:

First Parcel: Beginning at a stone set at the intersection of the North Westerly line of Bridge Street with the North Easterly line of Union Street; running thence North 48° 35′ West, along the North Easterly line of Union Street, a distance of 733.2 feet to a stone; thence North 79° 31′ West, a distance of 457.3 feet to a stone; thence South 41° 25′ West, a distance of 425 feet to a stone set on the North Easterly line of lands now owned or occupied by The Pennsylvania Railroad Company; thence North 48° 35′ West, a distance of 132.9 feet to an iron pipe filled with concrete; thence North 2° 17′ East a distance of 10.3 feet to an iron pin set in concrete; thence North 48° 35′ West a distance of 819.5 feet to an iron pin; thence South 60° 30′ East a distance of 152 feet to an iron pin; thence North 26° 46½ West a distance of 159.68 feet; thence North 48° 14½ West, a distance of 96.6 feet to a point on the Southerly line of lands now owned or occupied by The Lake Erie and Eastern Railroad Company; thence in an Easterly direction along the Southerly line of said lands now owned or occupied by The Lake Erie and Eastern Railroad Company, a distance of about 2514 feet to a point in the center of the Mahoning River; thence along the center of the Mahoning River, in a general south Easterly direction to a point in the North-Westerly line of Bridge Street, if said Street were extended on its present course into said River, thence South 41° 25′ West along said Extension of the North Westerly line of Bridge Street and along the North Westerly line of Bridge Street, a distance of 855.6 feet to the place of beginning.

Second Parcel: Being a triangular shaped parcel of land lying at the Southerly end of the Bridge crossing the Mahoning River and bounded North Easterly by the Mahoning River; Southerly by the right of way occupied by The P. & L. E. Railroad Company's switch from its main line to The Struthers Furnace Company, and North-Westerly by the South Easterly line of Bridge Street, and containing ½ acre of land and water, be the same more or less, and now known as a part of Out-Lot No. 23 in the City of Struthers.

Third Parcel: Also all rights and privileges which The Struthers Furnace Company have or may have in or to the right of way upon which is constructed switching Railroad track connecting the above described lands and running through a part of the same, with the Pittsburgh & Lake Erie Railroad Company's main line.

All of the above described parcels containing 32.306 acres of land, be the same more or less.

WADE MINE LEASES.

All the right, title and interest which the Company has or may hereafter acquire in the following described property, whether under and by virtue of a certain indenture of Lease from North Star Iron Company of West Virginia as Lessor to The Cleveland Cliffs Iron Company, as lessee, dated February 1, 1918, an undivided one-half interest in which lease was thereafter assigned by The Cleveland Cliffs Iron Company to the Struthers Furnace Company by assignment dated October 31, 1918, to otherwise, and more particularly described as follows, to-wit:

Situated in the County of St. Louis and State of Minnesota, and described as the North half of the Southeast quarter (N. ½ of S.E. ¼), the North half of the Southwest quarter (N. ½ of S.W. ¼) and the Southeast quarter of the Southwest quarter (S.E. ¼ of S.W. ¼) of Section twelve (12), also the North half of the Northwest quarter (N. ½ of N. W. ¼) and the Southeast quarter of the Northwest quarter (S.E. ¼ of the N.W. ¼) of Section Thirteen (13) all being in Township Fifty eight (58) north, Range Nineteen (19) west.

Also all right, title and interest which the Company now has or may hereafter acquire in and to a certain Operating Agreement executed by and between North Star Iron Company of West Virginia and The Cleve-

land Cliffs Iron Company, dated February 1, 1918, covering the operation of the premises demised by the aforesaid lease dated February 1, 1918, between the same parties, an undivided one half interest in which Operating Agreement was assigned by The Cleveland Cliffs Iron Company, to The Struthers Furnace Company by assignment dated October 31, 1918.

And with all the privileges, appurtenances, easements and rights thereunto belonging, subject, however, at all times to all the rights of said North Star Iron Company of West Virginia under said Operating Agreement.

HELMER MINE LEASES.

All the right, title and interest which the Company has or may hereafter acquire in the following described property, whether under and by virtue of State Mineral Contract No. 402, executed by the State of Minnesota to Robert Whiteside on November 28, 1900, for the purposes therein stated, which contract was thereafter assigned by Arthur C. Swallow, Administrator, *et al.*, to The Cleveland Cliffs Iron Company, by assignment dated January 2, 1918, and an undivided one half interest in which contract was thereafter assigned by The Cleveland Cliffs Iron Company to The Struthers Furnace Company, by assignment dated October 31, 1918 or otherwise, and more particularly described as follows, to-wit:—

Situated in the County of St. Louis and State of Minnesota and described as:—

The Northeast quarter of the Northeast quarter (N.E. ¼ of N.E. ¼) of Section Fourteen (14) in Township Fifty Eight (58) North, Range Nineteen (19) West.

Subject, however, to the covenants and conditions contained in the following:

Agreement by and between William A. Kerr, *et al.* and E. H. Jennings, *et al.*, dated December 12, 1906, filed in the office of the State Auditor of the State of Minnesota, and recorded in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 6 of Agreements, Page 20. Sub-lease by and between the Jennings Mines Company *et al.* and George C. Swallow *et al.*, dated July 13, 1909, filed in the office of the State Auditor of Minnesota, and recorded in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 10, of Agreements, Page 122, which sub-lease was

modified by an agreement by and between the aforesaid parties dated July 23, 1913, and recorded in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 17 of Agreements, Page 27.

Also all the right, title and interest which the Company now has or may hereafter acquire in the following described premises, whether under and by virtue of a certain sublease entered into by and between the Jennings Mines Company *et al.* and George C. Swallow dated July 13, 1909, filed in the office of the State Auditor of the State of Minnesota and recorded in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 10 of Agreements, Page 122, and a modification of said sub-lease entered into by and between the aforesaid parties dated July 23, 1913, recorded in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 17 of Agreements, page 27, which sub-lease and modification thereof were assigned by Arthur C. Swallow, Administrator, *et al.* To the Cleveland Cliffs Iron Company by assignment dated January 2, 1918, and an undivided one half interest in which sub lease and modification thereof was assigned by The Cleveland Cliffs Iron Company to The Struthers Furnace Company by assignment dated October 31, 1918, or otherwise, and more particularly described as follows, to-wit:

Situated in the County of St. Louis and State of Minnesota and described as the West half of the Northeast quarter (W. ½ of N.E. ¼) and the Northwest quarter of the Southeast quarter (N.W. ¼ of S.E. ¼) of Section Fourteen (14), Township Fifty Eight (58) North, Range Nineteen (19) west.

Also all the right, title and interest which the company now has or may hereafter acquire in the following described premises, whether under and by virtue of a certain License Agreement entered into by and between Oliver Iron Mining Company and George C. Swallow *et al.*, dated December 7, 1916, which License Agreement was thereafter assigned by Arthur C. Swallow, Administrator *et al.*, to The Cleveland Cliffs Iron Company by assignment dated January 2, 1918, and an undivided one half interest in which License Agreement was assigned by The Cleveland Cliffs Iron Company to the Struthers Furnace Company by assignment dated October 31, 1918, by and renewal or extension thereof, or otherwise, and more particularly described as follows, to-wit:

Situated in the County of St. Louis and State of Minnesota, and described as the Southeast quarter of the Northeast quarter (S. E. ¼ of N. E. ¼) of Section Fourteen (14) in Township Fifty eight (58) North, Range Nineteen (19) West.

This transfer, by way of Mortgage of the right, title and interest of the Struthers Furnace Company in and to said License Agreement or any renewal or extension thereof shall not be operative or effective as an assignment of the Company's interest therein until Oliver Iron Mining Company and the other owners referred to in said License Agreement of December 7, 1916, shall consent to this transfer by way of Mortgage.

And with all the privileges, appurtenances, easements and rights thereto belonging.

All other lands, interests in lands, easements, leases of lands and any and every right with respect thereto, whatsoever and wheresoever the same may be situated, which the Company now owns or has or ever shall hereafter acquire and the present and future appurtenances thereof; together with any and all fixed assets of any and every nature now owned or hereafter acquired by the Company, including all the roads, railroads, railway tracks, industrial tracks, side tracks and sidings, switches, trestles, streets, ways, passages, waters, water courses, riparian and other rights, privileges, hereditaments and appurtenances whatsoever, and the reversions and remainders; and all plants, buildings, offices, structures, improvements, houses, shops, forges, blast furnaces, pig casting machinery, mills, machine shops, repair shops, laboratories, engine houses, locomotive cranes, steam shovels, car equipment, 126 Steel hopper cars, all marked "Hopper T. S. F. X.," numbered as follows: 1000 to 1045, both numbers inclusive, of 100,000 pounds capacity each, 2001 to 2060, both numbers inclusive, of 110,000 pounds capacity each, 3000 to 3019 both numbers inclusive, of 140,000 pounds capacity each, (including railroad, transfer, larry, slag, hot metal, charging, skip and scale cars), ore unloaders, elevators, drums, cranes, skull cracker cranes, engines, boilers, pumping machinery, piping and fittings, machines and fixtures, electric lighting systems, electric power circuits electric generators and motors, electric appliances, switchboards, transformers, ladles, crane buckets, conveyors, shafting, belting, pulleys, couplings, tools, imple-

ments and fixtures, furniture, safes, drawings, prints, patterns, models, licenses, records, surveys, documents and maps; all repair parts belonging to any of the aforementioned equipment or parts kept or acquired as spares or duplicates and all other apparatus, appliances, tools, implements, equipment and accessories which may now or at any time hereafter be used for or in connection with the business of the company upon the above described premises or which may now or at any time hereafter be located thereon; and all the estate, right, title, interest, possession, claim and demand of every nature and kind whatsoever, at law or in equity, of the Company, in and to any of the things aforesaid now or hereafter arising.

And all corporate or other rights, privileges and franchises which the Company now has or which hereafter the Company shall acquire, possess or become entitled to.

And any and all property of every name and nature, from time to time hereafter by delivery or writing of any kind for the purposes hereof conveyed, mortgaged, pledged, transferred or assigned by the Company, or by anyone in its behalf, to the Trustee, which is hereby authorized to receive any property at any and all times, as and for additional security, and also, when and as hereafter provided, as substitute security for the payment of the Bonds and to hold and apply all such property subject to the terms hereof.

There is not included hereunder any corporate stocks owned by the Company nor any mined ore, coal, coke, supplies, manufactured iron, cash accounts, bills receivable or current assets, all being expressly excluded herefrom.

That in said mortgage it is provided in Article V thereof:

Section 2. "In case one or more of the following events, herein termed 'events of default,' shall happen, that is to say,

"(a) Default shall be made in the payment of any installment of interest on any of the bonds as the same shall become payable, as therein and herein expressed, and such default shall continue for thirty days.

Section 4. "In case of the happening of an event of default specified in Section 2 of this Article and its

continuance for the period, if any, specified in said Section then and in each and every such case, such default subsisting, the Trustee,

"(b) May proceed to protect and enforce its rights and the rights of bondholders under this Mortgage by suit in equity or action at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted or for any foreclosure hereunder or for the enforcement of any proper legal or equitable remedy as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce the rights aforesaid.

Section 5. "In case upon the happening and continuance of any of the events of default aforesaid, the Trustee shall proceed by a suit in equity or action at law, the Trustee shall be entitled, pending any such suit or action, as a matter of right, to the appointment of a receiver of the trust estate, and of the tolls, earnings, revenues, rents, issues, profits and incomes thereof.

Section 6. "The Company, for itself, its successors and assigns, covenants and agrees with the Trustee, that if by reason of the happening and continuance of any event of default aforesaid the Trustee commences or institutes any suit or action or other legal proceedings to obtain possession of the trust estate, it will, and its successors and assigns shall, waiving the issue and service of process, thereupon enter a voluntary appearance in such suit or action or proceeding and consent to the entry of a judgment for the recovery and possession of the trust estate and of the tolls, earnings, revenues, rents, issues, profits and income thereof; and that upon the commencement by the Trustee of any suit or action or other legal proceedings in compliance with the provisions hereof for the foreclosure of this Mortgage, it will, and its successors and assigns shall, waiving the issue and service of process, enter a voluntary appearance in such suit or action or proceeding and consent to the appointment of a receiver or receivers of the trust estate and the tolls, earnings, revenues, rents, issues, profits and income thereof for the benefit of the holders of the bonds.

Section 8. "In the event of any sale, whether made under the power of sale hereby granted and conferred or under or by virtue of judicial proceedings, the whole of

the property subject to the lien hereof shall be sold in one parcel and as an entirety, unless the holders of a majority in amount of the bonds then outstanding shall in writing request the Trustee to cause such property to be sold in parcels, in which case the sales shall be made in such parcels as shall be specified in such request, or unless such sale as an entirety is impracticable by reason of some statute or otherwise.

"The Company, for itself and all persons and corporations hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all right to have the properties and estate comprised in the security intended to be created by this Mortgage marshalled upon any foreclosure or other enforcement hereof, and the Trustee, or any court in which the foreclosure of this Mortgage or administration of the trusts hereby created is sought, shall have the right as aforesaid to sell the entire property of every description comprised in or subject to the trusts created by this Mortgage as a whole in single parcel.

Section 16. "Upon any such sale, any purchaser, for the purpose of making settlement or payment for the property purchased, shal be entitled to use and apply any bonds and any matured and unpaid coupons thereto appertaining, after such bonds and coupons have been presented to the Trustee for crediting thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the holder of such bonds and coupons as his ratable share of such net proceeds after the deduction of costs, expenses, compensation and other charges; such purchasers shall be credited on account of the purchase price of the property purchased with said sums so payable out of said net proceeds on the bonds and coupons so presented and at any such sale any bondholder or any other person may appear and purchase such property and may make payment therefor, as aforesaid, and upon compliance with the terms of sale may hold, retain and dispose of such property without further accountability therefor."

That said Mortgage was duly recorded in the office of the Recorder of Mahoning County, Ohio, May 20, 1922 as a real estate mortgage, Instrument, Serial Number 3358, Chattel Mortgage Instrument Serial Number 62461, and was duly recorded in the Office of Registrar of Deeds

of St. Louis County, Minnesota, June 13, 1922 in Book 458 of Mortgages, page 83, and was duly filed in the office of Registrar of Titles, St. Louis County, Minnesota, June 22, 1922 as Document No. 53010.

That the defendant has broken the conditions of the said Mortgage by defaulting in the payment of the semi-annual installment of interest due on all of the said bonds November 1st, 1924, such default having continued for a period of more than thirty days.

WHEREFORE the plaintiff as Trustee under said Mortgage prays;

1. That it be given judgment for $1,560.00, being the principal amount of said bonds plus the semi-annual installment of interest thereupon due on November 1st, 1924, together with interest at the rate of 8% per annum upon the said overdue principal and installment of interest and such reasonable compensation to this plaintiff as Trustee its agents and attorneys as may be determined by the court.

2. That said Mortgage be declared a valid first lien upon all and singular the real and personal property therein and herein described, including all renewals and replacements of the same or of any part thereof, and of the appurtenances thereunto belonging.

3. That the property described in the said Mortgage and herein, be sold under orders of this Court in one parcel and that the proceeds of said sale be brought to this Court to be distributed by it and that payments be made out of the proceeds of such sale in the following order:

1. Costs and expenses of such sale.

2. The expenses of and reasonable compensation to the plaintiff as Trustee, its agents and attorneys.

3. The amount due on the outstanding bonds for principal and interest, with interest at the rate of 8% per annum upon the said overdue principal and interest, and further that if this plaintiff or any of the holders of the said bonds bid upon such property at such sale they be allowed as a credit in part payment of any such bid the amount which they would otherwise receive from the proceeds of such sale upon such bonds and the coupons attached, upon presenting such bonds and coupons to be credited thereupon the proportionate amounts which would otherwise accrue to such bonds and coupons from

the proceeds of such sale, all as provided in said Mortgage.

4. In case of the insufficiency of the proceeds of such sale to pay the full amount of the principal and interest so due and unpaid upon said bonds secured by said mortgage with interest upon the overdue interest and reasonable compensation to the plaintiff as Trustee, its agents and attorneys, that such insufficiency be declared a valid claim against the defendant.

5. That a receiver be forthwith appointed to take charge of the property of the defendant to manage, control and conduct the same and collect the rents, earnings, issues, profits and incomes therefrom.

6. That the court order the defendant or any receiver appointed to take charge of the defendant's property to hold, set apart and sequester any and all amounts received as rents, earnings, issues, profits or incomes by the defendant or any said receiver, from or upon any of the property described herein, for the payment of the amount due upon said bonds for principal and interest, with interest upon the overdue interest and reasonable compensation to the plaintiff as trustee, its agents and attorneys.

For such other and further relief in the premises as may be just and equitable.

TOLLES, HOGSETT, GINN & MORLEY,
Attorneys for the Plaintiff.

STATE OF OHIO,
CUYAHOGA COUNTY, SS.

L. B. Foote, being first duly sworn, deposes and says that he is Vice President of the Guardian Savings and Trust Company, the above named plaintiff, duly authorized herein, that he has read the foregoing petition and that the allegations and averments contained therein are true as he verily believes.

L. B. FOOTE.

Sworn to before me and subscribed in my presence this 14th day of January 1925.

J. W. REAVIS,
Notary Public.

(Seal)

COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

I, N. H. CHANEY, Clerk of the Court of Common Pleas of said County do hereby certify that the foregoing is a true and correct copy of the PETITION in the case of THE GUARDIAN SAVINGS & TRUST CO. vs. THE STRUTHERS FURNACE COMPANY now on file in my office.

WITNESS my hand and the seal of the said Court this 14th day of February, A. D. 1925.

N. H. CHANEY, *Clerk.*

By ETHEL M. BRICKMAN (Signed)
Deputy.

No. 56103.
COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO.

THE GUARDIAN SAVINGS & TRUST COMPANY,
Cleveland, Ohio,
Plaintiff,

VS.

THE STRUTHERS FURNACE COMPANY,
Struthers, Ohio,
Defendant.

PETITION.

CLERK'S OFFICE, MAHONING COUNTY, OHIO.
FILED JAN. 15, 1925.
N. H. CHANEY, *Clerk.*

TOLLES, HOGSETT, GINN & MORLEY,
Attorneys for Plaintiff.

IN THE COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

THE GUARDIAN SAVINGS & TRUST COMPANY, TRUSTEE,
Plaintiff,

vs.

THE STRUTHERS FURNACE COMPANY,
Defendant.

JAN. TERM, 1925.
TO-WIT: JAN. 22, 1925.
JOURNAL VOL. 144 A
PAGE 108.

CERTIFIED COPY OF JOURNAL ENTRY.

This cause came on to be heard upon the petition of plaintiff herein and the prayer contained in said petition that a receiver be forthwith appointed to take charge of the property of the defendant The Struthers Furnace Company, to manage, control and conduct the same and collect the rents, earnings, issues, profits and incomes therefrom, and it appearing to the Court that there is now pending in this Court a cause recorded on the records of this Court as the cause of Louis S. Baldwin, plaintiff, versus The Struthers Furnace Company and The Guardian Savings & Trust Company, Trustee, No. 56102 in which latter cause prayer is also made by plaintiff for the appointment of a receiver to take charge of the plant, property and assets of the said The Struthers Furnace Company; and it further appearing to the Court that it will be for the best interests of all the parties to this action and the action of Louis S. Baldwin versus The Struthers Furnace Company and The Guardian Savings & Trust Company, Trustee so to do, the Court, upon its own motion and for the purpose of the appointment of a receiver to do the things for which prayers are made in the petitions filed in these cases hereby consolidates the case of Louis S. Baldwin versus The Struthers Furnace Company and The Guardian Savings & Trust Company Trustee, No. 56102 with this case insofar as the questions of the appointment and acts and duties of a receiver are common to both the last mentioned case and the case now being considered by this Court.

Coming now to the consideration of the prayers of the petition in this cause and the cause consolidated herewith as aforesaid, the Court finds that there is urgent exigency existing calling for the immediate appointment of a receiver in these cases to preserve the property and assets of the said The Struthers Furnace Company.

Whereupon the Court hereby grants the prayers of the petitions for a receiver in both these cases and hereby appoints Hugh W. Grant of Youngstown, Ohio, receiver in both said cases, and directs and empowers said receiver to take possession of all the property, real and personal, designated in the petition in the said cause of Louis S. Baldwin versus The Struthers Furnace Company and The Guardian Savings & Trust Company, Trustee, No. 56102, together with all other property, both real and personal, of said company, including its books and papers; and it is hereby ordered, adjudged and decreed that the said receiver, after the giving of bond as hereinafter provided, shall be, and he is hereby, authorized and directed to do all things necessary to be done by him in order to properly preserve and protect the assets and property of the company in his control for the best interests of all parties interested therein and to manage, control and conduct the same and collect the rents, earnings, issues, profits and incomes therefrom.

It is hereby ordered, adjudged and decreed that the said Hugh W. Grant, before entering into his duties as receiver aforesaid, shall give bond in the sum of Fifty Thousand Dollars ($50,000.00) to the approval of the Court.

It is further ordered, adjudged and decreed that all pleadings, proceedings and entries in or of this Court made or filed with reference to the action or conduct of said Receiver shall be made, filed, had and recorded in the case of The Guardian Savings & Trust Company, Trustee, versus The Struthers Furnace Company, and the said pleadings, proceedings and entries so made, filed, had and recorded shall also apply to and be made a part of the case of Louis S. Baldwin versus The Struthers Furnace Company and The Guardian Savings & Trust Company, Trustee No. 56102, with the same force and legal effect as though also made, filed, had and recorded in the said case of Louis S. Baldwin versus

The Struthers Furnace Company and The Guardian Savings & Trust Company Trustee. The costs of cause No. 56102 to follow in cause No. 56103.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

I, Ford H. Canfield, Clerk of the Court of Common Pleas within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the proceedings of said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

IN TESTIMONY WHEREOF, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Youngstown, in said County, this 7th day of Dec., A. D. 1925.

FORD H. CANFIELD, *Clerk.*
MARJORIE THORNTON, *Deputy Clerk.*

No. 56103.

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COURT OF COMMON PLEAS.

MAHONING COUNTY, OHIO.

CERTIFIED COPY OF JOURNAL ENTRY.

THE GUARDIAN SAVINGS & TRUST COMPANY TRUSTEE,
Plaintiff,

against

THE STRUTHERS FURNACE CO.,
Defendant.

IN THE COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

LOUIS S. BALDWIN, Struthers, Ohio,
Plaintiff,

vs.

THE STRUTHERS FURNACE COMPANY, and
THE GUARDIAN SAVINGS & TRUST COMPANY, Trustee,
Defendants.

No. .....

PETITION.

Plaintiff says that he is a citizen of the State of Ohio and that he is a resident of the City of Struthers, County of Mahoning and said State of Ohio; that he is a preferred stockholder of The Struthers Furnace Company, which is a corporation duly and legally created, organized and existing under and by virtue of the laws of the State of Ohio, and that said The Struthers Furnace Company, is a citizen of the State of Ohio; that plaintiff is the owner of preferred stock of said Company of the par value of Three Thousand, Five Hundred Dollars ($3,500.00); that said Company is the owner of a plant and property in the said City of Struthers, Mahoning County, Ohio, for the manufacture, production and sale of foundry and basic pig iron, situated on a part of Out-lot Number Twenty-one (21) and Out-lot Number Twenty-three (23) according to the latest enumeration of lots in said City of Struthers, comprising Thirty-two and three hundred six thousandths (32.306) acres of land, more or less; that it is also the owner of an undivided one-half (½) interest in what is known as the "Wade Mine Leases," being leases of iron ore on property situated in the County of St. Louis and State of Minnesota; that it is also the owner of an undivided one-half interest in the "Helmer Mine Leases," situated also in the County of St. Louis and State of Minnesota, and other contracts and agreements relating to said leases for iron ore.

Plaintiff further says that the defendant, The Struthers Furnace Company, successfully operated its plant and manufactured pig iron and marketed its product at a fair price for many years prior to about May

1st, 1924; that it then had on hand and was unable to sell at a profit upwards of Eighty Thousand (80,000) tons of pig iron; that the price had been so reduced on account of the mills in the Mahoning and Shenango district constructing furnaces, operating the same and manufacturing pig iron to supply their own needs, and more, and by reason of selling their surplus pig iron in competition with the product of merchant furnaces in the market and manufacturing such iron for their own use, both limited the customers and markets of such merchant furnaces and so broke the same that said defendant company was unable to dispose of its stock on hand, both manufactured and to be manufactured, except at a great loss, if at all, and on or about May 1st, 1924, said Company was therefore compelled to close down its plant and cease operations and has not been able to sell its product and to operate, for want of capital ever since; that as a further result of said conditions the price of its product was materially reduced and if said Company is to continue in business upon a competitive basis, it must meet, or substantially meet, said reduction in prices so made by its competitors, or failing so to do, be unable, as heretofore, to sell its manufactured product; that as a result of the conditions and situation hereinbefore set forth, the operation of said plant was discontinued and could not be continued, except at a great loss.

Plaintiff further says that said Company is indebted, on bonds secured by first mortgage trust deed to the defendant, The Guardian Savings & Trust Company, a duly organized and existing banking and trust Company, as Trustee, under the laws of the State of Ohio, in the sum of One Million, Five Hundred Thousand Dollars ($1,500,000.00); that it has been unable to pay off the semi-annual interest due on said bonds November 1st, 1924, in the sum of Sixty Thousand Dollars ($60,000.00), and has no funds with which to pay the same and the accruing interest; that said Company is further indebted on past due notes, accounts and other current obligations in sum of Two Million, Seventy-two Thousand, Seven Hundred Ten and 14/100 Dollars ($2,072,710.14).

Plaintiff further says that said Company is in urgent need of additional working capital with which to finance the operation of its business, but that in view of the general financial conditions heretofore and now ex-

isting, and especially in view of the conditions at the present time prevailing in the merchant furnace manufacturing industry and narrowed market for its product, it is unable at the present time to finance its additional capital requirements, either by the sale of bonds, notes, stocks or otherwise; that said plant cannot be put in operation under present conditions by the Company; that in view of the fact that it is unable to meet its outstanding obligations, contractual and otherwise, it is and will be subjected to the commencement of suits against it, the recovery of judgments against it, the issuance of executions against its plant, property and assets and the sale of such plant, property and assets, unless such judgments are paid and discharged; that in order to secure its outstanding notes and obligations to Banks, in the sum of One Million, Seven Hundred Twelve Thousand, Seven Hundred Thirteen & 03/100 Dollars ($1,712,713.03) it transferred Warehouse Certificates, covering about Eighty Thousand (80,000) tons of pig iron and Thirty-three Thousand, Five Hundred (33,500) tons of iron ore as collateral security; that one of the holders of said notes and obligations has already sold Twenty-two thousand, Five Hundred Sixty-five (22,565) tons of pig iron and Twenty-six Thousand (26,000) tons of iron ore and bought in the same for its own account and has wrongfully failed and refused to account for said Company's equity therein, which plaintiff is informed and believes and therefore avers would amount to One Hundred Thousand Dollars ($100,000.00) or more, at the present market price.

Plaintiff further says that under prevailing conditions the plant, property and assets of said Company could not be sold except at a great loss and that, as hereinbefore set forth, said Company is unable at the present time in any way or manner to finance its past, present and maturing obligations.

Wherefore, and by reason of the facts hereinbefore set forth, plaintiff says that for the protection of the bondholders, stockholders and creditors of said Company alike it is necessary that a Receiver be appointed to take charge of and conserve the plant, property and assets of said Company until such time when the financial requirements of said Company may be provided and the reorganization of said Company, if necessary, accomplished.

Wherefore, plaintiff prays that this Honorable Court will, by order, duly entered, appoint a Receiver to take charge of the plant, property and assets of said The Struthers Furnace Company, and for each other and further relief as in equity it may be entitled and as the nature of the case may require.

HARRINGTON, DEFORD, HUXLEY & SMITH,
Attorneys for Plaintiff.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

Louis S. Baldwin, being first duly sworn, says that he is the plaintiff in the foregoing action and that the facts stated and allegations made in the foregoing Petition are true as he verily believes.

LOUIS S. BALDWIN.

Sworn to before me and subscribed in my presence this 15th day of January, A. D. 1925.

FORD H. CANFIELD
Notary Public.

(Seal)

IN THE COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

LOUIS S. BALDWIN,
Plaintiff,

VS.

THE STRUTHERS FURNACE COMPANY, and
THE GUARDIAN SAVINGS & TRUST COMPANY,
Defendants.

PRECIPE.

To the Clerk:

Issue summons in the above entitled action, directed to the Sheriff of Mahoning County, Ohio, for the defendant, The Struthers Furnace Company, and to the Sheriff of Cuyahoga County, Ohio, for the defendant, The Guardian Savings & Trust Company, returnable according to law. Endorse same, "Action for equitable relief and the appointment of a Receiver."

HARRINGTON, DEFORD, HUXLEY & SMITH,
Attorneys for Plaintiff.

COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

I, FORD H. CANFIELD, Clerk of the Court of Common Pleas of said County, do hereby certify that the foregoing is a true and correct copy of the PETITION AND PRECIPE in the case of LOUIS S. BALDWIN vs. THE STRUTHERS FURNACE COMPANY ET AL., now on file in my office.

WITNESS my hand and the Seal of the said Court this 22nd day of April, A. D. 1927.

FORD H. CANFIELD, *Clerk.*

(Seal) By MARJORIE THORNTON, *Deputy.*

No. 56102.

COURT OF COMMON PLEAS,

MAHONING COUNTY, OHIO.

LOUIS S. BALDWIN,

Plaintiff,

vs.

THE STRUTHERS FURNACE COMPANY *et al.,*

Defendants.

PETITION AND PRECIPE.

CLERK'S OFFICE, MAHONING COUNTY, OHIO.

FILED JAN. 15, 1925.

N. H. CHANEY, *Clerk.*

HARRINGTON, DEFORD, HUXLEY & SMITH, *Attorneys,*
Youngstown, Ohio.

IN THE COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

LOUIS S. BALDWIN, *Plaintiff,*
against
THE STRUTHERS FURNACE COMPANY *et al.,* *Defendants.*

JAN. Term, 1925
to-wit: January 20, 1925.
Journal Vol. 144a
Page 88.

CERTIFIED COPY OF JOURNAL ENTRY.

This cause coming on to be heard upon the petition of plaintiff and the prayer therein contained that this Court, by order, appoint a receiver to take charge of the plant, property and assets of The Struthers Furnace Company, and it appearing to the Court that there is now pending in this Court an action in which The Guardian Savings & Trust Company, Trustee, is plaintiff and The Struthers Furnace Company is defendant and numbered as case No. 56103 of this Court in the petition in which case prayer is also made by The Guardian Savings & Trust Company trustee, that a receiver be appointed to take charge of the property of The Struthers Furnace Company and to manage, control and conduct the same and collect the rents, earnings, issues, profits and incomes therefrom; and it appearing to the Court that The Struthers Furnace Company is the owner of the several parcels of real estate, leases and personal property described in the petition filed in the case of The Guardian Savings & Trust Company, Trustee, versus The Struthers Furnace Company; and it further appearing to the Court that it will be for the best interests of all the parties to this action and the action of The Guardian Savings and Trust Company, Trustee, versus The Struthers Furnace Company, so to do, the Court, upon its own motion and for the purpose of the appointment of a receiver to do the things for which prayers are made in the petitions filed in these cases, hereby consolidates the case of The Guardian Savings & Trust Company, Trustee, versus The Struthers Furnace Company No. 56103, with this case insofar as the questions of the appointment and acts and duties of a receiver are common to both the last mentioned case and the case now being considered by this Court.

Coming now to the consideration of the prayers of the petition in this cause and the cause consolidated herewith as aforesaid, the Court finds that there is urgent exigency existing calling for the immediate appointment of a receiver in these cases to preserve the property and assets of the said The Struthers Furnace Company.

Whereupon the Court hereby grants the prayers of the petitions for a receiver in both these cases and hereby appoints Hugh W. Grant of Youngstown, Ohio, receiver in both said cases, and directs and empowers said receiver to take possession of all the property, real and personal, designated in the petition in the said cause of The Guardian Savings & Trust Company, Trustee, versus The Struthers Furnace Company No. 56103, together with all other property, both real and personal, of said company, including its books and papers; and it is hereby ordered, adjudged and decreed that the said receiver, after the giving of bond as hereinafter provided shall be, and he is hereby, authorized and directed to do all things necessary to be done by him in order to properly preserve and protect the assets and property of the company in his control for the best interests of all parties interested therein and to manage, control and conduct the same and collect the rents, earnings, issues, profits and incomes therefrom.

It is further ordered that the officers, agents and employees of said, The Struthers Furnace Company, immediately upon demand of said Receiver, turn over to said Receiver all property of said Company including money, all books, notes, papers, records, chattels, evidences of debts and assets of every kind and description.

It is hereby ordered, adjudged and decreed that the said Hugh W. Grant, before entering into his duties as receiver aforesaid, shall give bond in the sum of Fifty Thousand Dollars ($50,000.00) to the approval of the Court.

It is further ordered, adjudged and decreed that all pleadings, proceedings and entries in or of this Court filed with reference to the acts or conduct of said receiver shall be filed, had and recorded in the case of The Guardian Savings & Trust Company, Trustees, versus The Struthers Furnace Company, No. 56103, and with the same force and legal effect as though filed, had and recorded in both the causes to which reference is herein made.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

I, Ford H. Canfield, Clerk of the Court of Common Pleas within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal of the Proceedings of said Court within and for said County, and that said foregoing copy has been compared by me with the original entry on said Journal, and that the same is a correct transcript thereof.

IN TESTIMONY WHEREOF, I do hereto subscribe my name officially and affix the Seal of said Court, at the Court House in Youngstown, in said County, this 7th day of Dec. A. D. 1925.

FORD H. CANFIELD, *Clerk.*

(Seal) MARJORIE THORNTON, *Deputy Clerk.*

No. 56102.

Journal Vol. 144A Page 88

COURT OF COMMON PLEAS,

MAHONING COUNTY, OHIO.

CERTIFIED COPY OF JOURNAL ENTRY.

LOUIS S. BALDWIN,

Plaintiff,

against

THE STRUTHERS FURNACE COM. *et al.,*

Defendants.

IN THE COURT OF COMMON PLEAS.

MAHONING COUNTY, OHIO.

THE GUARDIAN SAVINGS & TRUST COMPANY, TRUSTEE,
Plaintiff,
vs.
THE STRUTHERS FURNACE COMPANY,
Defendant.

No. .....

APPLICATION OF RECEIVER TO BRING SUIT AGAINST A. B. LEACH & COMPANY, INC.

Now comes Hugh W. Grant, the duly appointed Receiver in the above entitled cause, and moves the Court for an order granting to him, as such Receiver, authority to bring suit against A. B. Leach & Company Inc. with offices in New York, Chicago and Cleveland, in the District Court of the United States Northern District of Ohio, Eastern Division, and for ground therefor says:

That the said A. B. Leach & Company, Inc., on or about the 15th day of May 1922, was the owner of three thousand (3000) shares of the preferred stock of The Struthers Furnace Company and that on or about said date it entered into an ultra vires, illegal, unlawful, unjust and unreasonable contract with The Struthers Furnace Company by the terms of which contract the said A. B. Leach & Company sold, transferred and traded to The Struthers Furnace Company the said three thousand shares of preferred stock and received from The Struthers Furnace Company first mortgage bonds upon the real estate and property of the said company in payment of said preferred stock.

This Receiver represents to the Court that he believes that he should recover for the benefit of the stockholders and creditors of the company the fair market value of the bonds thus delivered to the said A. B. Leach and Company, Inc. or the bonds themselves, and that it would be to the material benefit of the creditors and stockholders of the company if leave to commence said action were granted by this Court.

A. M. HENDERSON,
One of the Attorneys for the Receiver.

COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

I, Ford H. Canfield, Clerk of the Court of Common Pleas of said County do hereby certify that the foregoing is a true and correct copy of the APPLICATION OF RECEIVER TO BRING SUIT AGAINST A. B. LEACH & COMPANY INCORPORATED in the case of The Guardian Savings & Trust Co. vs. The Struthers Furnace Co. now on file in my office.

WITNESS my hand and the Seal of the said Court this 13th day of Dec. A. D. 1926.

(Seal)

FORD H. CANFIELD, *Clerk.*
By ALMA WARNER, *Deputy.*

No. 56103.

COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO.

THE GUARDIAN SAVINGS & TRUST CO., TRUSTEE,
Plaintiff,

VS.

THE STRUTHERS FURNACE CO.,
Defendant.

APPLICATION OF RECEIVER TO BRING SUIT AGAINST A. B. LEACH & COMPANY, INCORPORATED.

CLERK'S OFFICE,
Mahoning County, Ohio.
Filed July 30, 1925.
FORD H. CANFIELD, *Clerk.*
WILSON, HAHN, HENDERSON & WILSON, *Attys.*
Terminal Bldg.

CERTIFIED COPY OF JOURNAL ENTRY.

COURT OF COMMON PLEAS.

MAHONING COUNTY, OHIO.

THE GUARDIAN SAVINGS & TRUST COMPANY, TRUSTEE, *Plaintiff,*

vs.

THE STRUTHERS FURNACE COMPANY, *Defendant.*

MAY TERM, A. D. 1925.
TO-WIT:
JULY 30, 1925.
No. 56103.
JOURNAL VOL. 145A
PAGE 539.

CERTIFIED COPY OF JOURNAL ENTRY.

This cause came on to be heard upon the application of the Receiver for leave to sue A. B. Leach & Company, Incorporated, in the District Court of the United States, Northern District of Ohio, Eastern Division, as more fully set out in the Application filed herein, and it appearing to the Court that it is for the best interests of the creditors and stockholders of the company that such action be commenced:—

It is hereby ordered, adjudged and decreed that the said Hugh W. Grant, Receiver in this action, be, and he is hereby, authorized and directed to so commence the action aforesaid against A. B. Leach & Company, Incorporated, in said Court, praying for such relief as should be obtained against said company, either for money judgment or otherwise, in order to reimburse the said Receiver for the apparent unlawful and illegal issuance of bonds by said company to A. B. Leach & Company on or about May 15, 1922 in payment for which said A. B. Leach & Company sold, assigned, transferred and set over to said company three thousand shares of the preferred stock of said The Struthers Furnace Company theretofore purchased and then owned by said A. B. Leach & Company, Incorporated.

COURT OF COMMON PLEAS.

THE STATE OF OHIO,
MAHONING COUNTY, SS.

I, Ford H. Canfield, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Record of said Court are required by the Laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and copied from the Journal of the proceedings of said Court, that the foregoing has been compared by me with the original entry on said Journal, and that the same is a true and correct copy thereof.

IN TESTIMONY WHEREOF, I hereunto subscribe my name officially, and affix the seal of said Court at the Court House in Youngstown, in said County, this 8th day of Feb. 1926.

FORD H. CANFIELD,

(Seal) *Clerk of said Court of Common Pleas.*

By MARJORIE THORNTON, *Deputy.*

No. 56103.

Doc. Page.

COMMON PLEAS COURT
MAHONING COUNTY, OHIO.

THE GUARDIAN SAVINGS & TRUST COMPANY, TRUSTEE,
Plaintiff,

vs.

THE STRUTHERS FURNACE COMPANY,
Defendant.

CERTIFIED COPY OF JOURNAL ENTRY.

Journal Vol. 145A Page 539.

The suggestion referred to in the stipulation hereinbefore contained came from the United States Circuit Court of Appeals in the form of a letter, an exact copy of which letter being as follows:

"Cincinnati, Ohio,
May 24th, 1928.

Newman, Poppenhusen, Stern & Johnston,
Roanoke Building,
Chicago, Ill.

Day & Day,
Engineers Bank Bldg.,
Cleveland, Ohio,

Wilson, Hahn & Wilson,
Terminal Building,
Youngstown, Ohio,

Mr. A. M. Henderson,
City Bank Building,
Youngstown, Ohio.

Gentlemen:

In connection with the case of A. B. Leach & Company, Inc. vs. Hugh W. Grant, Receiver of the Struthers Furnace Company, No. 4663, I am directed to say that it appears to the court that a decision as to the authority of the receiver to maintain this suit, if such decision were based merely upon the absence from the present record of the proceedings of the Common Pleas Court bearing upon such authority, would not be effective as a final decision upon that point,—since the Court would be much inclined to remand the record so that either party might correct this omission in the proofs, if such omission there had been. It is therefore suggested to counsel that they consider whether the rights of the parties may be properly preserved under a stipulation that there now be filed in this court certified copies of any order or orders made in the Common Pleas Court appointing the receiver, and any petition or petitions upon which such orders were based, and of the order, if any, purporting to authorize the receiver to bring this suit, and of the petition, if any, filed and the notice, if any, given supporting such order. If such a stipulation is made and such copies are filed, the court will hear

oral arguments, half an hour on each side, on June 13th next, and will consider any printed briefs which may then be filed.

The further argument desired will be devoted to the question whether authority to bring this suit either was or could be conferred upon the receiver, and be rightly based upon the pleadings, in connection with the controlling statutes and equitable principles, and whether such authority would or would not be rightly incidental to and consistent with the nature and purposes of his possession of those assets which passed to the receiver.

If, in the judgment of counsel, this stipulated addition to the record should make necessary taking further proofs, which it may be claimed would have been taken if the record had been thus completed at the trial, the court will consider also the right to take such further proofs.

Yours very truly,

(Signed) ARTHUR B. MUSSMAN,
ARTHUR B. MUSSMAN, *Clerk.*"

ABM-NL

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPEARANCE OF COUNSEL

(Filed June 4, 1926)

ARTHUR B. MUSSMAN,
Clerk of said Court:

Please enter my appearance as Counsel for the Appellant.

NEWMAN, POPPENHUSEN, STERN & JOHNSTON,
Chicago, Ill.

DAY & DAY, *Cleveland, Ohio.*

CAUSE ARGUED AND SUBMITTED

(January 5, 1927—Before DENISON, MOORMAN and HICKENLOOPER, JJ.)

This cause is argued by Mr. Edward R. Johnston for the Appellant and by Mr. Andrew M. Henderson and Mr. James P. Wilson for the Appellee and is submitted to the Court.

CAUSE RE-ARGUED AND SUBMITTED

(June 13, 1928—Before DENISON, MOORMAN *and* HICKENLOOPER, JJ.)

This cause is re-argued by Mr. Edward R. Johnston for the Appellant and by Mr. James P. Wilson and Mr. Andrew M. Henderson for the Appellee and is submitted to the Court.

DECREE

(Filed June 30, 1928)

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On Consideration Whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby reversed with costs and the cause remanded to the said District Court with direction to dismiss the bill.

OPINION

(Filed July 11, 1928)

Before DENISON and MOORMAN, Circuit Judges, and HICKENLOOPER, District Judge.

MOORMAN, Circuit Judge: The appellant, A. B. Leach & Company, purchased an issue of bonds, of the par value of a million, five hundred thousand dollars, from the Struthers Furnace Company on May 15, 1922, for which the Struthers Company accepted in part payment three thousand shares of its own preferred stock at the agreed price of $85.00 a share. In January of 1925 Hugh Grant was appointed receiver for the Struthers Company by the common pleas court of Mahoning County, Ohio, and in August of 1925 he brought this suit to recover from Leach & Company the bonds which it received in exchange for the three thousand shares of stock, asking the alternative relief of an accounting if the bonds had been sold or disposed of and could not be recovered.

The bill averred that plaintiff was the duly appointed and qualified receiver "of all the property, goods, assets,

choses in action, and of all other kind and character of property of the Struthers Furnace Company," and that the action was brought "by virtue of authority granted him [the plaintiff] by the court so appointing him receiver." In its answer appellant admitted the appointment of Leach as receiver, but alleged that it had no knowledge or information as to his authority to bring the action. Upon the latter question no issue was made in the evidence. We preferred not to decide it upon a construction of the pleadings, and hence we suggested to counsel that they file certified copies of any orders or proceedings had in the common pleas court, where the receiver was appointed, and stipulate that this court might consider such orders or proceedings in determining the question on its merits. This suggestion has been acted upon and certified copies of all pertinent pleadings and orders have been filed.

There were two suits filed in the Mahoning County Court: One by Baldwin, a preferred stockholder, seeking the appointment of a receiver; and the other by the Guardian Savings & Trust Company, trustee under the mortgage, to foreclose the mortgage, and asking in aid thereof the appointment of a receiver. The same receiver was appointed in each case and the two causes were consolidated. The sole relief sought in the Baldwin case was the appointment of a receiver. This was asked on the ground that the company did not have funds to pay its due obligations, and that unless a receiver was appointed it would be subjected to suits and judgments, and to sacrificial sales of its plant and assets. No claim was asserted against any one in the bill, and there was no averment of waste, mismanagement, or any wrongful act on the part of the corporation or directors, or that any of plaintiff's rights as a stockholder had been impaired or injured by any act of the company or its officers. The other suit was a foreclosure suit to sell the mortgaged property and apply the proceeds thereof to the mortgage debt.

It is well settled that the appointment of a receiver can be made only in aid of some primary object of a pending suit, and that an action for the appointment of a receiver cannot be maintained where no cause of action or ground for equitable relief is otherwise stated. *Gillespie* v. *Illi-*

would be without remedy as, in that case, any injured precedent creditor or preferred stockholder could maintain an action for restitution. Whether such creditor or stockholder would be permitted to intervene for that purpose in the foreclosure suit, and assert so hostile a claim to the objects of that suit, may well be doubted. *Commonwealth Trust Co.* v. *Power Co.* (N. H.), 89 Atl. 452. That question, however, we do not have to decide, since for our purposes it is enough to say that a court cannot confer on a receiver appointed in a foreclosure proceeding the power to do something not in aid of the purposes of the suit.

In arriving at the conclusion just stated we have had no occasion to consider whether the order appointing the receiver can be attacked in this case. The question is not whether that order is valid but whether the receiver had authority, as he alleged, to bring this suit. Nor do we overlook *Sayle, Receiver,* v. *Guarantee Savings & Loan Co.,* 2 O. C. C. R. (N. S.) 401, affirmed without opinion in 72 O. S. 639. That case is to be considered, we think, in the light of the further rule in Ohio that a court has no authority to appoint a receiver, and therefore no power to confer, except in aid of the objects of a pending cause. When so considered the decision in the circuit court and its affirmance without opinion in the supreme court can not be regarded as establishing a settled construction by the highest court of the state. The affirmance by the supreme court may have been upon some other ground than that on which the action of the circuit court was based.

It is said, however, that the action of the common pleas court was within the powers which it possessed to marshal liens on the mortgaged property, and to determine rights of lien claimants among themselves. That power, it may be admitted, exists in a proper action where one lien claimant is asserting a right or preference against another, or is seeking to have the claim of another adjudged invalid; but in our opinion it does not exist in the court *sua sponte* in a foreclosure suit where there is but one lien or mortgage, admitted to be valid in the pleadings, and where none of the claimants there-

under nor any other interested party is contesting the claim of any one else. The trustee did not claim that any of the bonds were fraudulently issued to appellant, or that any of them were invalid or did not constitute a lien in the hands of Leach & Company or its assignee on the mortgaged property. No bondholder, creditor or stockholder has asserted any such claim, and none of them may ever do so; and yet the court, whose jurisdiction was invoked solely to foreclose the mortgage, went beyond that purpose and directed its receiver to institute a suit in another jurisdiction to cancel certain of the mortgage bonds or to recover, in behalf of creditors and stockholders (presumably the mortgaged property would satisfy in full the mortgage debt) a judgment against the holders of such bonds. It might be argued that the order was invalid because of the rule forbidding a receiver not vested with the title to the receivership property to bring such a suit in a foreign jurisdiction. *Manufacturing Company* v. *Harris,* 198 U. S. 561; *Stewett* v. *Bank of Cincinnati,* 248 U. S. 73. But we do not go into that question, as we think it was beyond the power of the court, as otherwise limited, to make such authorization.

It follows that the decree must be vacated and the bill dismissed.

Hickenlooper, District Judge, dissents.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, ARTHUR B. MUSSMAN, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *A. B. Leach & Company* v. *Hugh Grant, Receiver, etc.*, No. 4663, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 6th day of August, A. D. 1928.

ARTHUR B. MUSSMAN,
[SEAL] Clerk of the United States Circuit Court
of Appeals for the Sixth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 29, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.